UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026(REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 28, 2011

9:57 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

STATUS CONFERENCE re Nova Scotia Issues:
Official Committee of Unsecured Creditors' First Amended Objection to Claims filed by Green Hunt Wedlake, Inc. and Noteholders of General Motors Nova Scotia Finance Company and Motion for Other Relief

MOTION to Allow Payment of Reasonable Fees and Expenses of the Ad Hoc Committee of Asbestos Personal Injury Claimants Pursuant to 11 U.S.C. § 503(b)

APPLICATION for Final Professional Compensation for Asbestos Claims Valuation Consultant to Dean M. Trafelet in his Capacity as Legal Representative for Future Asbestos Personal Injury Claimants for Analysis Research Planning Corporation

MOTION to Reconsider FRCP 60 or FRBP 3008 Claim No. 44306 (related document(s) 8000) re Sentry Select Insurance Company

DEBTORS' OBJECTION to Proof of Claim No. 45631 filed by Steven Newman c/o Michael Green, Deceased

247TH OMNIBUS OBJECTION to Claims and Motion Requesting Enforcement of Administrative Bar Date Order (Late-Filed Administrative Proofs of Claim)

248TH OMNIBUS OBJECTION to Claims (Insufficient Documentation)
Claims of William Kuntz III

249TH OMNIBUS OBJECTION to Claims (Insufficient Documentation)

250TH OMNIBUS OBJECTION to Claims (No Liability: Claims Assumed by General Motors LLC)

251ST OMNIBUS OBJECTION to Claims (No Liability Claims)

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P R O C E E D I N G S

THE COURT: Ladies and gentlemen, we have a very busy calendar today with three, and perhaps, four matters where I'm going to have to dictate decisions. For that reason, I want to take care of matters where -- that wouldn't be a factor, such as Nova Scotia -- and I see Nova Scotia people are up here at the front. And then more likely than not, I will take argument on everything and then take a recess and come back with all of the dictated decisions.

One or two of them are particularly easy. And I'm thinking of the Kuntz objection. And if you want to move that up front, we may be able to vary it, but I think that that will be the way I want to proceed.

All right. People want to give me an update on Nova Scotia?

MR. O'DONNELL: May it please the Court, Your Honor. Sean O'Donnell of Akin Gump on behalf of the Nova Scotia trustee.

THE COURT: I can't hear you.

MR. O'DONNELL: I apologize. May it please the Court, Your Honor. Sean O'Donnell with Akin Gump --

THE COURT: O'Donnell?

MR. O'DONNELL: Yes, sir.

THE COURT: Okay.

MR. O'DONNELL: -- on behalf of the Nova Scotia

trustee. As the Court may recall, we wrote to the Court requesting a conference just so we could put a scheduling order in place with respect to the issues that are involved in the litigation. I defer to my colleagues, Mr. Finger of Greenberg Traurig on behalf of the debtors and also on behalf of the noteholders --

THE COURT: Just a minute. I hear a lot of noise on the phone which is unacceptable. CourtCall, mute everybody on the call unless there are people on the call who need to participate in this conference.

THE OPERATOR: Yes, Your Honor.

THE COURT: Thank you.

MR. O'DONNELL: -- and also to Mr. Eric Fisher on behalf of the general unsecured committee trust. Your Honor, I think all that we need to do at this point is the parties are looking to establish a hearing date with the Court's indulgence. And then we can work backward and kind of fill in the blanks on our own and submit a proposed order to the Court rather than taking up your time with all the details. I think there may be one or two other points that the colleagues -- my colleagues would like to mention. But primarily, we're working around an April 30th date. The preference for the Nova Scotia trustee and for the noteholders would be that we work backward from that date in terms of the Court's availability. And I think Mr. Fisher, depending on that availability, may want to

work forward.

THE COURT: Did you consult with courtroom deputy to find out available dates in that range?

MR. O'DONNELL: I don't think we have specific dates in that range, Your Honor. I apologize.

THE COURT: Do you have a means for which or by which I could set a schedule without any consultations with my courtroom deputy?

MR. O'DONNELL: Speaking off the top of my head, Your Honor, we could certainly provide a proposal to you with blanks in it for the Court to fill in.

THE COURT: But you're looking for a trial date in the April 30 range?

MR. O'DONNELL: Yes, Your Honor.

THE COURT: All right. Let me hear from the other parties. Mr. Fisher?

MR. FISHER: Your Honor, Eric Fisher from Dickstein Shapiro for the GUC trust. I'll be very brief because Mr. O'Donnell is correct. I think we just need a hearing date and the parties will be able to work collaboratively back from there.

There was some dispute about when that hearing date ought to be. And if Your Honor simply gives us an indication as to the range that Your Honor considers reasonable, I'm confident, as Mr. O'Donnell indicated, we can work backwards.

Based on how thing and given that we're still expecting some documents from one of the noteholders from Morgan Stanley to be delivered by mid-November, we think it's reasonable to expect that document discovery will be completely over by the end of December including resolving whatever stray document disputes there may be. And then, Your Honor, what's left between the close of document discovery and a hearing is we think approximately fifteen depositions, fact depositions. Expert discovery is likely. The noteholders and perhaps the trustee will want to seek authorization from the Court to make dispositive motions, pre-hearing submissions and then ultimately a hearing.

So we think -

THE COURT: Dispositive motions? Is there a reason why people think that on this fact-intensive matter, dispositive motions are going to be productive.

MR. FISHER: Your Honor, the GUC trust certainly does not think so. But I know -- just in terms of scheduling, I expect that the noteholders and the trustee will seek -- will write pre-motion letters and seek permission to make dispositive motions. There are some standing issues that they've raised that they believe are amenable to dispositive motions.

And I mention it only because it affects determining how much time we need between now and a hearing date to get all

the work done. We think four months, effectively, is enough time. So if you envision that fact depositions get going in January, we envision a hearing date April 30th or May. And we're happy to consult with Your Honor's deputy and get a date during the month of May. We expect four days of hearing, Your Honor. I expect that our case will be largely adverse direct testimony and between ten to fifteen witnesses including, in all likelihood, one expert witness.

THE COURT: Ten to fifteen witnesses and an expert in four days?

MR. FISHER: Yes, Your Honor.

THE COURT: Let me hear from you, Mr. O'Donnell. I take it you're the guy who wants to file or at least wants to have the option to file dispositive motions.

MR. STEINBERG: Your Honor, Arthur Steinberg for new GM. We would also want to be able to file dispositive motions on certain issues am I'm happy to speak about it after you --

THE COURT: All right.

MR. FINGER: Good morning, Your Honor. My name is Kevin Finger of Greenberg Traurig on behalf of certain of the noteholders. And the comments by all counsel I would echo here today. To directly address the Court's question, there are matters that can be decided as a matter of law. They have been raised in the responses to the objection. They've been highlighted there that we think can be decided separate and

apart from any factual issues. And taking the Court's direction that the last time this issue was presented before the Court to follow the rules applicable in this court for presenting those dispositive motions to the Court.

THE COURT: And what discussions did you have with your opponent with respect to what would happen to the trial date while I was thinking about those dispositive motions assuming I gave permission for them to be filed?

MR. FINGER: Our discussions, Your Honor, have essentially been with Mr. Fisher to follow the rules that are applicable in this court for seeking permission from the Court participating in a conferencing going forward.

THE COURT: You already said that but that wasn't my question. Presumably, you or new GM or somebody -- by dispositive motion, I assume that's a euphemism for summary judgment.

MR. FINGER: Yes, Your Honor.

THE COURT: That is a matter that, once you get beyond preference cases, is rarely decided off the bench. I don't remember exactly the amount of controversy in this case, but I think it runs roughly from 350 million to a billion dollars. Am I right in the ballpark terms?

MR. FINGER: It's higher than that, Your Honor. I believe it's --

THE COURT: Okay.

MR. FINGER: -- in the neighborhood of two billion dollars.

THE COURT: Two billion. Forgive me. It's at least foreseeable, isn't it, that it's going to take me a little time to decide dispositive motions?

MR. FINGER: It is, Your Honor, if the Court grants permission to pursue that.

THE COURT: If I grant permission at all. And then is it also foreseeable that the time to think about such motions and/or to write them might have an effect upon the trial date?

MR. FINGER: Yes, Your Honor.

THE COURT: Now help me better understand the purpose of a trial date when it is subject to that contingency.

MR. FINGER: Two primary issues, Your Honor. First, we want to take these opportunity to update the Court on discovery. It's been almost a year since we've been before the Court and the Court authorized discovery in this matter. And we want to provide a joint status report to that effect.

Secondly, the parties had been discussing a potential schedule hearing. They've had some difficulty getting resolution of those issues. And the parties believe that setting a hearing date would facilitate, in terms of working backwards, how the parties would then move to written discovery and then oral discovery, expert discovery and work in the prospect of dispositive motions. So from that perspective,

it's been useful --

THE COURT: Well, forgive me. That sounds a little like Through the Looking Glass. You know, sentence first, verdict later. How can one set a schedule without knowing that which must be accomplished to be ready to achieve the event you want me to schedule?

MR. FINGER: Your Honor, it has been a fruitful discussion between the parties to discuss these types of scheduling items. I think that if we get to a point where the Court permits dispositive motions to go forward then perhaps we -- discovery will be essentially complete under the Court's direction and the rules applicable in this court. And at that point, we may seek to adjourn the hearing and move it out to accommodate the Court's consideration of those motions if they're permitted to go forward.

THE COURT: Mr. O'Donnell, you want to be heard?

MR. O'DONNELL: Your Honor, I think, as he correctly pointed out, the last time we were here, which was actually in December of 2010, and we talked about whether or not pretrial motions would be appropriate while discovery was ongoing that you correctly pointed out to the parties that that's a bit of putting the cart in front of the horse. And it's not so much that we are looking to resolve that issue before the Court today as we are to make sure that there are no surprises for the Court and to let you know that the parties have discussed

the issues. I think at the close of the document production and the deposition that, at a minimum, there will be several issues that will be crystallized that we can present to the Court on paper, have the pretrial motion and you'll either be comfortable or not comfortable that that will fit within the schedule that's been set by the Court. I think the parties, and you'll hear also from Mr. Steinberg, are confident that there will be at least one or two issues, of course Mr. Fisher excluded, that can be resolved on summary judgment and would certainly hopefully narrow the ten to fifteen witnesses that he intends to call.

THE COURT: Mr. Steinberg, you can come on up, please.

MR. STEINBERG: Good morning, Your Honor. I want to be clear that to the greatest extent possible, new General Motors does not want to get into the way of this disagreement which involves a serious issue involving up to two billion dollars worth of claims. However, as we said in our pleading that we filed and I articulated at the -- about ten months ago -- so if I can just briefly say something in thirty seconds, the committee's objection to claim embodies a Rule 60(b) motion or 60(b) allegation to upset the sale order which obviously is something that relates to new General Motors. A good portion of their theory of recovery with regard to disgorgement of the consent fee involves an avoiding power right which was, in effect, purchased by General Motors as part

of the sale order. Their issues relating to the swap claim which is embedded into the Nova Scotia trustee's claim as against old General Motors, that was something that was purchased by new General Motors as part of the asset purchase agreement. And if you read the noteholders' response to the objection to claims, they raised the issue that if they don't get everything that they wanted that the release embedded in the lockup agreement, which protected GM Canada, may be impacted.

So we rise and we seek to participate in these proceedings to essentially protect our sale order, the assets that we purchased and to make sure that GM Canada is protected so that nothing that Your Honor does in relation to this claim undoes the release that's embedded in the lockup agreement. Other than that, we have contractually agreed to be supportive of the noteholders. But the noteholders and the Nova Scotia trustee are on their own in establishing the bona fides of their claim in front of Your Honor. And we didn't commit to do anything more than to be supportive of that.

And that is why I was surprised, frankly, when I saw the status conference because documents were taking eight months to gather and all of a sudden everybody wanted to go to trial in four months. We don't care when you take this to trial. I know Your Honor does care but we are indifferent. We will go at whatever pace that Your Honor sets and whatever pace

that the parties want to set. I rise today to make sure that Your Honor will allow us to participate in these proceedings, protect those specific rights that I've articulated because they are important to new General Motors. This is a contested matter, not an adversary proceeding, so I didn't have a motion to intervene to be able to say something. On the other hand, I've spoken to the committee counsel and to the noteholders' counsel all of whom said they recognize why we have an economic interest to participate.

If I --

THE COURT: So you're looking, in substance, for a Caldor order applicable in a contested matter.

MR. STEINBERG: That's correct.

THE COURT: Now to what extent (a)did I already rule on this; and (b)do any of the other parties in the case have any objection?

MR. STEINBERG: I don't think Your Honor has ruled on this at all. I did speak at the last conference and I did talk to each of the parties beforehand and each one recognized that I should be entitled to participate in the hearing.

THE COURT: I have no memory of having previously said you can't speak. You would just like to have that a little better clarified?

MR. STEINBERG: Oh, I didn't -- if you did say that then I --

THE COURT: No. I think I let you speak every time you've come in and you've tried to stand up and say something, haven't I?

MR. STEINBERG: You do. But since -- I didn't want anybody to say later on that I had not formally done something to solidify my opportunity to speak to protect New GM's rights. And I am particularly concerned -- and I don't mean to make this more complicated, but we do have a procedure where avoiding power claims are essentially being asserted not in the context of an adversary proceeding. And I want to make sure that issue is joined with regard to whether the lockup agreement will be enforced and specifically the releases contained in the lockup agreement to be enforced, because the last thing I want to do -- see happen is that Your Honor rules how ever Your Honor will rule and then the Nova Scotia trustee sues GM Canada in Canada and says it's based on Judge Gerber's ruling. I'd want to make sure that Judge Gerber's ruling addresses the issue that we are in compliance with the lockup agreement which solidifies the release for GM Canada. And that's a very, very important issue not only for New GM but also for the large old creditor constituency in New GM.

THE COURT: Well, Mr. Steinberg, it seems to me that the only thing that I could or should properly give you is an opportunity to be heard on whatever you want to be heard later on. Am I correct in that's really all you're asking me for?

MR. STEINBERG: That's all I'm asking for. But I will want to, Your Honor -- and it's not for summary judgment as to the allowance of a claim or not allowance of a claim. It is with regard to if there's a Rule 60(b) allegation that's contained in the objection to claim, which has never been articulated as to what provision of Rule 60(b) they're moving under, we would, before trial, like to see that thing -- and I think it could be dispositive -- to get rid of that issue. But we don't know for sure because he hasn't taken his depositions and he hasn't told us why he's really going forward on 60(b) in the first place. But obviously, the committee was supportive of the sale order and now to try to undo an aspect of the sale order doesn't seem to make sense.

To the extent that --

THE COURT: You're tending to repeat yourself now, Mr. Steinberg.

MR. STEINBERG: Okay. I don't mean to, Your Honor.

THE COURT: All right. Folks, you know me by now. I don't like a lot of motion practice on things where it's not required. Does anybody want to be heard on whether I give Mr. Steinberg Caldor relief so that he can be heard on whatever he wants to be heard going forward? Mr. Fisher, first you.

MR. FISHER: Your Honor, only to say that I have spoken to Mr. Steinberg. And we recognize that New GM does have a financial interest in this objection. And so, we have

no issue with Mr. Steinberg's participation.

THE COURT: All right. The bondholders' side.

MR. FINGER: We have the same position, Your Honor. We've spoken with Mr. Steinberg and recognize his right to be heard in this particular matter.

THE COURT: Okay. Anybody else who wants to weigh in on this who I haven't given an opportunity to? No. Subject to one last chance to be heard, I'm going to so-order the record giving Mr. Steinberg on behalf of New GM the rights to appear and be heard in this contested matter to the extent he needs it since 1109 would seemingly already give him that right. Subject to the same conditions that I put in my published decision, which I think was in Adelphia -- it might have been one of my other cases -- shortly after Calgor came out where I said that, of course, is always subject to the rights of the judge to control his docket and to avoid duplication and require coordination and the like. Anybody want to be heard in opposition to that?

MR. ZIRINSKY (TELEPHONICALLY): Your Honor, it's -- can you hear me? It's Bruce Zirinsky. I'm on the phone.

THE COURT: Yeah. Go ahead, Mr. Zirinsky.

MR. ZIRINSKY: How are you, Your Honor? Your Honor, just very briefly, I have no objection whatsoever to New GM's right to be heard or right to participate. I just want to make it clear, and I think it is clear but just for the record, that

this order that Your Honor has indicated he would enter would not in any way waive any defenses including jurisdiction over defenses that the parties might have and they might wish to assert with respect to any claims or position of GM -- New GM had asserted.

THE COURT: Well, I don't think I said anything about waivers and I didn't hear any of the parties saying anything about waivers. I think that goes without saying. You know, this being --

MR. ZIRINSKY: I just want to be secure.

THE COURT: This being a contested matter rather than an adversary, I'm not even sure if I'm saying anything that isn't already the law. But you can have your non-waiver rights, Mr. Zirinsky. Mr. Fisher has his non-waiver rights. And if I failed to include anybody, he or she has similarly not forfeited any waiver rights.

Mr. Steinberg, paper this ruling by a short simple order that substantially states what I just said on the record. Run it past the other parties in the case. See if you can reach agreement on its form. If you can't -- if you can't, I'm going to be upset. But if you have to, you can settle it.

MR. STEINBERG: Okay, Your Honor.

THE COURT: Thank you. All right. Now I gather there's some kind of timing dispute or some kind of dispute that you guys are --

MR. O'DONNELL: Your Honor, I actually don't know that there is a dispute anymore. I think that the date that the parties have pegged is April 30th. And depending on the Court's availability, I think -- Mr. Fisher's anticipating a four-day trial. With the number of witnesses that are identified, hopefully we can narrow that down, but we were hoping to hear from the Court as to what its availability was either a little before or a little after April 30th.

THE COURT: Well, forgive me, Mr. O'Donnell, but the way to try to ascertain my availability would have been to try to tell me before I showed up on the bench that you were going to be asking me for a particular date so that I could have consulted Ms. Blum. And I didn't see it in your letter. Maybe it was there and I just read it too quickly.

MR. O'DONNELL: No, Your Honor. Actually, at the time of the letter, I think the parties were further apart. And we've continued to try and resolve the issues. And as of today, I think so long as it's somewhere around April 30th, none of us can be heard to complain.

THE COURT: Well, let me tell you, gentlemen, when I make discretionary calls, I do it in part on my experience which is roughly eleven years as a judge and thirty years before that as a lawyer. When you're taking witnesses on adverse direct, and when redirect by necessity must follow it and to take on a very great importance, and when you've got

fifteen of those witnesses even though you're promising me that you can lower the number, you're smoking dope if you can do that in four days.

MR. O'DONNELL: Yeah. I --

THE COURT: And -- forgive me. And there's another consideration as well which is that setting the schedule, if you want to make dispositive motions, is a waste of my time, your time and my courtroom deputy's time unless you're content to go with what would be my preference which is to raise all of your legal objections at the same you raise your factual ones. Now, I sense that you don't want to give that right up yet. And I sense that Mr. Steinberg doesn't either. But am I missing something?

MR. FINGER: This is Kevin Finger, Your Honor. No, you're not missing that. We were not prepared to give that right up at this point. So that's something that we will -- fully intend to pursue pursuant to the rules of this court.

THE COURT: When do you think you guys would be in a position to tell me that you want me to consider the pre-motion conference which presumably would be after you've completed the remainder of your discovery?

MR. FISHER: Your Honor, Eric Fisher for the GUC trust. I'd like to just try to cut through this because I think we're here because when I suggested a May hearing date, I was told that was too slow. And when I suggested a four-day

hearing, I was told that was too long. So now that we're hearing Your Honor's views on the matter --

THE COURT: Well, I wasn't sitting in your depositions. Do you think my experience as a litigator wouldn't carry over to considering issues of this character?

MR. FISHER: I'm sure you're right about that, Your Honor. And it's an ambitious estimate. But we've been working together as collaboratively as we can. So I think we're optimistic that we can put on a case efficiently for that reason.

All that being said, I think we're going to be done with fact depositions at the latest by some time in mid-February. So I would simply suggest that we come back to Your Honor towards the end of February. We can get a date from Your Honor's deputy and use that --

THE COURT: Date for a conference or --

MR. FISHER: Date for a -- simply for a conference and use that conference as a pre-motion conference as well to the extent that any parties still think that they have well grounded dispositive motions. And not worry about a hearing date until we know what the picture is in terms of whether dispositive motions are going to be going forward or not.

THE COURT: Mr. O'Donnell? Mr. Finger?

MR. O'DONNELL: Your Honor, that's acceptable to the Nova Scotia trustee.

MR. FINGER: And to the noteholders, Your Honor.

THE COURT: All right. I'll agree to that in principle. I think that makes sense. I take it you don't need an exact date from me to interrupt this hearing to call my courtroom deputy out to pull out the book at this point.

MR. O'DONNELL: Correct, Your Honor.

MR. FINGER: No, Your Honor. We'll consult with the courtroom deputy for that purpose.

THE COURT: All right. Now to what extent do you have other matters in dispute that you need me to address?

MR. FINGER: I don't believe there are any other, Your Honor. Mr. Fisher may --

MR. FISHER: The only other issue, Your Honor, is going into this conference, we had asked for permission or consent from the other side to exceed the ten deposition limit. At the very most, we're talking about fifteen depositions. If we now have agreement on that then I don't think there are any remaining issues.

THE COURT: Gentlemen?

MR. O'DONNELL: No objection from the trustee, Your Honor.

MR. FINGER: We -- on behalf of the noteholders, Your Honor, we don't know who the deponents would be. And I think it's -- I think the reason we haven't reached agreement is because we think it's premature slightly to agree to that

number without knowing who the potential deponents are. I think, as Mr. Fisher indicated, we've worked collaboratively so far to resolve our disputes. I just -- I happen to think that this particular issue is premature at this point.

THE COURT: Gentlemen, why don't we do this? Have the dialogue, talk it out. And if you continue to have a difference in perspective, set up a telephonic conference call.

MR. FINGER: We'll do that, Your Honor. Thank you.

THE COURT: Okay. Anything else?

MR. O'DONNELL: That's it, Your Honor.

MR. FINGER: No, Your Honor.

THE COURT: All right. Then you're all excused. And I would like -- did I see Mr. Smolinsky out there somewhere? Mr. Smolinsky, could I ask you to come up and give me your recommendations as to the way to proceed?

MR. SMOLINSKY: Good morning, Your Honor. Joseph Smolinsky, Weil Gotshal & Manges on behalf of the post-effective date debtors and the Motors Liquidation Company GUC trust. Your Honor, in view of the comments made by Your Honor earlier, I would suggest that Ms. Greer go forward with her portion of the calendar which are the omnibus claim objections and then we'll proceed through the calendar through its normal course.

THE COURT: Okay. Ms. Greer?

MS. GREER: Good morning, Your Honor. Stefanie Greer

from Dickstein Shapiro on behalf of the trust. Today we have five omnibus claim objections, Your Honor. All except for one are uncontested. And the one is only uncontested (sic) as to one claim and that's the Mr. Kuntz claim that you alluded to earlier. If it's all right with Your Honor, I think I'll go through the omnibus objections and we can go back and hear from Mr. Kuntz and address --

THE COURT: Okay.

MS. GREER: Okay? So, first, we have the 247th omnibus objection which is late-filed administrative claims. All thirteen of those are going forward on an uncontested basis. The 248th omnibus objection, which is based on insufficient documentation, one of those has been adjourned, one withdrawn and thirty-nine are going forward. Today -- and that's where Mr. Kuntz' claim comes in and that the one uncontested (sic) one -- the one contested matter. The 249th omnibus objection is also an insufficient documentation objection. Ten of those have been adjourned, three have been withdrawn, and eighty-three are going forward. And we have the 250th omnibus objection. That's a no-liability objection which deals with claims assumed by New GM. Two claims have been withdrawn -- or two of our objections have been withdrawn and sixty-four are going forward. And then the 251st omnibus objection which are also no-liability claims, those are simply claims that General Motors has no liability for. So eight of

those are going forward on an uncontested basis.

THE COURT: Okay. That's all fine. All right. Now are you going to be arguing Kuntz on behalf of the estate?

MS. GREER: Yes, Your Honor.

THE COURT: Is Mr. Kuntz in the courtroom? Come on up, please. Mr. Kuntz, come to the main lectern, please. Give me your full appearance. And I will hear you. You should know that I've read the papers and I will whatever you have to say to supplement your papers.

MR. KUNTZ: William Kuntz III, India Street, P.O. Box 1801, Nantucket Island, Massachusetts 02554. Before getting into the merits or demerits of this, I'd like to make it perfectly clear that I'm more than willing to have this adjourned till April. I already had a matter set for trial in Florida on the 15th of November. And the date in November that was offered to me would require me to fly back from Florida at my own expense. And the amount of money that's at issue here is microscopic compared to the sums that are at issue. It's obvious to me that the debtors haven't done any investigation. They didn't call anybody. They didn't look anywhere. And I've had a lot of e-mail exchanges -- I'm willing to give them every opportunity to dig into this. Their own press release said they analyzed something. If they analyzed something, that means that there has to be a form, a statement, a witness, an analyst, somebody they can prove. All they've done so far --

THE COURT: We're going forward today, Mr. Kuntz.

MR. KUNTZ: That's fine, Your Honor. I have a prepared statement, if I may read it.

THE COURT: So long as it's consistent with what I said which is that it's nonrepetitive of your papers, yes.

MR. KUNTZ: I'm not sure what you mean by that, Your Honor.

THE COURT: Mr. Kuntz, I have a multi-billion dollar case here for which I prepare in advance based upon papers that counsel give me.

MR. KUNTZ: Well, first --

THE COURT: And -- no. You can't interrupt the judge, sir. And I could not run my courtroom or the cases on my watch without orderly procedures. You may supplement your papers. You can deal with anything that was not addressed in your papers, but you are not going to impose on the patience of the other people in this case or upon GM's creditors, old GM's creditors. So you will proceed under the terms that I articulated.

MR. KUNTZ: Well, Your Honor, first, let's deal with the reply of the debtor. It was served -- it was not served within the rules. It was out of time. They attempted to fax a hundred pages worth of documents to a motel. As I understand the procedures, if I don't list a fax number on my papers, if I don't list an e-mail address on my papers, I'm not able to be

served in that fashion. I previously advised counsel that the computer at the motel on Cape Cod the word system, the program for reading documents, was down. They went ahead two days ago or three days ago and sent me five large word files or whatever that I couldn't open. I advised them that. Within twenty-four hours, they started pumping pages and pages and pages and pages through the motel's fax machine, a fax number which is for the motels to make reservations. It's not for guests to receive, you know, huge amount of faxes. The desk clerk wrote on there "Refused", faxed it to them. The faxes continued to come. I went up to Staples. I faxed it again. Sent -- you know, with a receipt, time and date. The faxes continued to come. As I stand here now, their reply papers are out of time. They're out of time and not served. I got e-mails saying oh, we need a better address for you. I have a post office box address on my papers. The Federal Rules of Civil Procedure provide and contemplate service by mail. Not Federal Express, not DHL. All those things are in some other area. And to my knowledge, the papers that they attempted to send to me in Nantucket were put in the hands of their overnight courier after the cutoff time. And in New York State, as far as I understand, if they don't get the papers in to Federal Express' hands or whoever -- and I've never received those papers yet -- I was never served. So therefore, all you have is the two magic words, "insufficient documentation", and my reply and the proofs of

claim.

The proofs of claim are filed under penalty of five years in prison and half a million dollar fine. How much would you expect in a large case like this for somebody to document a 300 dollar claim. There's the form, gets signed. It was filed in time.

The other two involve a thirty-year old truck that went to one dealer and then went to another dealer. And then General Motors put the guy into the small dealer exit program, none of which was investigated. You know, they weren't aware of that. And then right attached to the exhibit to the proof of claim down in Willsboro, the demand for arbitration under the New York CPLR. I don't know what they mean when they say insufficient documentation. Maybe it's not boiler plate General Motors style but certainly there was enough for them to send a letter. In the papers, there's an e-mail from the claims department in April -- April -- where they basically acknowledged they've received. They'll get back with me. Did I get a postcard? Did I get a letter? Nothing. This is just carpet filing. This is the same that's gone on in Lehman and everything else. The lawyers that come here -- you know, 20,000 claims have probably been knocked out of this case because people don't understand the procedure. I've read some of the handwritten papers that people -- they just don't understand. I understand a little bit and I think that the

Court should rule them out of time and allow these small claims.

THE COURT: Mr. Kuntz, I need you to focus on one thing.

MR. KUNTZ: I have nothing more --

THE COURT: Which -- no.

MR. KUNTZ: I have nothing more to say.

THE COURT: You will not inter --

MR. KUNTZ: I have nothing more to say, Your Honor.

THE COURT: All right. Ms. Greer?

MS. GREER: Your Honor, Stefanie Greer again on behalf of the trust. Our arguments are set forth in our papers, Your Honor. I'll just make a quick point. Certainly, Your Honor, we did assert the reply in accordance with the case management order three days prior to the hearing. He obviously received it since he responded to it with his own surreply. So I don't think there's any valid issue there.

There is nothing in his claims which establishes any claim against GM. And I just want to note for the record that all the facts that he's alleged in his papers are otherwise -- the trust disputes as a matter of fact.

THE COURT: All right. Very well.

MS. GREER: Do you have any questions, Your Honor?

THE COURT: Not from you.

MS. GREER: Thank you.

THE COURT: Mr. Kuntz, I will hear reply limited to what Ms. Greer said, if you wish.

MR. KUNTZ: I don't see the affidavit of service. I went to the clerk's office this morning. I looked this morning on the court's docket. Their proof of serving the papers has not yet been filed and we're in court now. I, this morning, filed an errata -- 'cause I left off my phone number on my reply. So my phone number was on the papers to comply with the Federal Rules of Civil Procedure. And I also filed my proof of service this morning. Their proof of service of their late papers is not on file as we speak. Now perhaps counsel has a copy they'd like to offer. I've offered to put this over till April. And I can obviously see you're -- Your Honor is aggravated about this. I'm not -- I came down here to basically -- I offered to start with to put it over till April. They declined. This case is going to be going on in April of next year. This case will probably be going on in April of 2014. It's their ego, their insistence that we're going to do this the General Motors way that has me here making Your Honor angry. I apologize.

THE COURT: All right. With so many people in the courtroom, I don't want to interrupt the proceedings now by the dictated decision. We'll go right to the next matter.

Let me ask the people in the courtroom who are waiting. It seems to me that I have the asbestos ad hoc

committee. I have asbestos claims valuation consultants. I've got the Newman matter. Do you have a recommendation as to the order in which I take those three? I will take argument on all three.

MR. SMOLINSKY: Again, Joseph Smolinsky, Your Honor. I have no preference. Perhaps we should just go in accordance with the agenda. The next matter on the calendar is the final application of Analysis Research Planning Corporation.

THE COURT: All right.

MR. SMOLINSKY: Your Honor, Analysis Research Planning Corporation, or ARPC, has requested total fees in this case of 758,031 dollars as consultant to the future claims representative. We're not objecting. And, in fact, Your Honor, you may recall the final approval has already been given for $422,782.50 fees. The debtors are objecting to the remaining amount of $335,248.50.

THE COURT: Mr. Smolinsky, the main thing I want to hear about is the distinction or the delta between the date that the stip was signed and the date that I approved it.

MR. SMOLINSKY: Your Honor, the amount that we're objecting to relates exclusively to fees that were incurred after the settlement was entered into on January 21st, 2011. So if you look at the breakdown of the 3700 hours that were incurred after that point, according to our records, there was approximately 75,000 dollars that was incurred between the time

that the stipulation was entered into and the time the stipulation was approved by the Court. Our calculations show that approximately 260,000 was incurred between the time that the settlement, the asbestos settlement, was approved by the Court and the confirmation hearing. And then, Your Honor, there was an additional 17,000 dollars that was incurred after the confirmation was approved. So I used March 31st -- March 29th as the cutoff which is the day that the plan was confirmed. So it's 75,000, 260,000 and 17,000.

THE COURT: Now, Mr. Smolinsky, I need your help, and I'll need help from Mr. Esserman, confirming my memory in the light of stuff that I've read in your respective papers. To what extent, if any, had any objections been voiced to the stipulation or to issues related to the stipulation in the later confirmation process?

MR. SMOLINSKY: Your Honor, there were no objections to the stipulation of settlement with respect to the fixed allowance of the claims to be used under the plan.

With respect to plan confirmation, there were certainly no collateral attacks on the validity of that settlement. There were some discussions, obviously, about the structure of the plan and the treatment of asbestos plaintiffs --

THE COURT: Well, I understand that. But the stipulation, among other things, fixed the amount and the

mechanism by which the asbestos claims would be satisfied, am I correct?

MR. SMOLINSKY: That's right, Your Honor. And after that settlement was approved, all of the professionals started working on -- the attorneys started working on briefs in support of plan confirmation.

THE COURT: Right. Now I remember a zillion -- I mean, I wrote an opinion on confirmation. And I remember the issues that I addressed in that opinion which principally related to dealing with disputed claims, claims reserves and releases.

I know what I dealt with in my written opinion. Between the time that the stip was signed and the confirmation hearing, were there pending objections that I never saw because they were dropped that related to asbestos claims getting too much?

MR. SMOLINSKY: No, Your Honor. There was never an objection raised with respect to the amount of that claim and that settlement. And the work that was done by the ARPC was not related to confirmation of the plan. The descriptions of the time that was spent for each and every entry was continued to review GM case documents supplied in response to FCR and ACC requests. That issue, that calculation, was never addressed after the settlement was signed.

THE COURT: All right. Continue, please.

MR. SMOLINSKY: So, Your Honor, it was understood by all the parties when we gathered by phone to go over the final touches on the stipulation of settlement. And it was understood by all the parties that it was pencils down after that. There was a recognition by the parties, and, in fact, the stipulation specifically provides that to the extent that there was a successful challenge to the approval of the stipulation that the March 1st, 2011 date -- trial date that was set for estimation of those claims would be put off to allow the parties to finish their discovery. And in fact, if you look at the time records that were billed by the other consultants, there was no time spent or virtually no time spent --

THE COURT: By anybody other than this entity.

MR. SMOLINSKY: That's right. There was one consultant that had thirty-nine hours after the stipulation was entered into. But other than that, the consultants had no time billed.

And for whatever reason, ARPC kept continuing to work on the analysis of how much the claims totaled. They worked seven days a week, overtime hours. One person billed twenty-eight hours on President's Day, which was February 21st, 2011, which was a week after the stipulation was approved by Your Honor.

So we've read the response and we simply don't

understand and don't think that the arguments that were made are relevant to the issue of whether the fees are reasonable under Section 330 of the Bankruptcy Code. We're not here to embarrass ARPC. We're not here to show a lack of gratitude for their participation in fashioning the settlement that was so critical to confirmation of the plan. But the challenged fees are so egregious that we felt compelled to bring this to Your Honor's attention for your consideration.

THE COURT: All right.

MR. SMOLINSKY: Thank you, Your Honor. Mr. Esserman, are you going to be speaking on behalf of that applicant?

MR. ESSERMAN: Yes, Your Honor. Your Honor, first, I've talked with ARPC and we've agreed to reduce -- well, ARPC agreed to reduce their application of -- the requested application to eliminate any fees post-confirmation -- post the commencement of the confirmation hearing on March 3rd, 2011.

THE COURT: But ARPC is still asking for fees after --

MR. ESSERMAN: The stipulation.

THE COURT: -- the deal was struck or at least after I approved the settlement?

MR. ESSERMAN: Yes, Your Honor. And the reason is as follows. 75,000 dollars of that was incurred prior to the entry of the Court of the stipulation.

THE COURT: That's the question that I asked Mr. Smolinsky.

MR. ESSERMAN: Yes.

THE COURT: In your understanding of the facts, it's the same 75,000 buck amount.

MR. ESSERMAN: 75,396 dollars was --

THE COURT: I'll hear the remainder of what you have to say, Mr. Esserman, but that is the principle area as to which I need argument.

MR. ESSERMAN: And that's the only area that I intend to address.

THE COURT: No. Forgive me. Are you withdrawing your request for anything after February 14th?

MR. ESSERMAN: No.

THE COURT: Well, then we have a difference in perspective.

MR. ESSERMAN: Okay. I'm --

THE COURT: So you're going to have to give me some help on that.

MR. ESSERMAN: Okay. I apologize, Your Honor. ARPC received on January 13 1.1 million pages of documents of discovery that we had been seeking to complete the report for ARPC. Until the confirmation hearing, until Your Honor approved confirmation of the plan, there was always the possibility that some creditor could come in and object to either the asbestos settlement or that we would need to testify -- that ARPC would need to testify. And therefore,

they needed to complete their report. These fees were all incurred to complete the report. I would point out, Your Honor, that with the reduction that we've requested, the total ARPC fees would be about 600,000 dollars. The unsecured creditors' committee expert incurred 1.199 million, almost two million dollars (sic) for the same work that ARPC has done. Now they completed it prior to the execution of the stipulation.

THE COURT: Isn't that a huge significant difference?

MR. ESSERMAN: It's gigantic. It's gigantic.

THE COURT: I'm not talking about the monetary amount. I'm talking about the temporal difference, that the services run up by the asbestos committee's expert were done up until the time the deal was struck and the bone of contention between you and Mr. Smolinsky is after the deal was struck.

MR. ESSERMAN: Except we got 1.1 million pages of documents that could have reflected on exactly what the final analysis was that had to be looked at. And that is what ARPC did in order to complete the report. We entered the stipulation under incredible time frames with an incomplete report. We did not have time to complete the report. And ARPC didn't have time to complete the report. And we were trying to accommodate the Court's schedule, everybody wanting to get this out, the tail of the dog being asbestos in the GM case. We understood that. We understood all the issues, the pressures

that everyone was under to get this case done. But we still felt -- the futures rep felt they needed to have a complete report.

THE COURT: Mr. Esserman, was there any discussion with ARPC about the possibility of that effort being done after the deal was struck for some other purpose, for some other controversy or some reason beyond a stipulation that was already reached?

MR. ESSERMAN: It was strictly for GM -- it was strictly for the GM case and strictly for the futures rep's understanding and analysis of the asbestos liability.

THE COURT: Vis-à-vis a deal that he had already struck back on January 21st.

MR. ESSERMAN: And a deal which he may have been called upon to testify at confirmation should that have been contested. And he needed to have a complete record. Otherwise, he was unprepared to testify as to the amount.

THE COURT: Remember the questions I asked Mr. Smolinsky when it was his turn? To what extent were any objections raised after the stip was signed to approval of that stip?

MR. ESSERMAN: I am not aware of any objections to the asbestos -- I agree with Mr. Smolinsky -- to the asbestos settlement.

THE COURT: All right. And if there had been any, you

would know it, wouldn't you?

MR. ESSERMAN: Oh, of course. I mean --

THE COURT: All right. Now to what extent were there any objections to confirmation premised upon the notion that asbestos claimants got too sweet a deal?

MR. ESSERMAN: There is no timely or untimely objection filed that I was aware of.

THE COURT: All right. Continue.

MR. ESSERMAN: But that doesn't mean that we -- we felt ARPC needed to be prepared and the futures rep needed to be prepared.

THE COURT: Well, let me raise one last question, a first cousin of what I asked a second ago. From time to time, people don't file formal objections but they call you up, they write you letters and they put you on notice that an objection is in the wings. Did you get any phone calls of that character?

MR. ESSERMAN: Not by anyone that I can recall.

THE COURT: Any letters of that character? Anybody saying in words or substance that the deal that had been struck for the asbestos claimants --

MR. ESSERMAN: It was somehow --

THE COURT: -- was too good and that it was going to lead to a confirmation objection?

MR. ESSERMAN: Not that I'm aware of, Your Honor.

THE COURT: Go on.

MR. ESSERMAN: That's all I have to say.

THE COURT: All right. Mr. Smolinsky, any reply limited to what Mr. Esserman said?

MR. SMOLINSKY: Your Honor, I don't want to beat a dead horse. I just want to add that he wouldn't have received any calls because these are future claimants. They don't have claims yet so they couldn't object. And what I struggle with in understanding is that if they finished their report and they found out that they settled too low, they could only be called into question for the settlement that they did based on the facts that they had at the time. If they corroborated the information, they were already prepared to testify at the settlement hearing that the amount that was fixed by the settlement was fair and reasonable. So that's all I have to say, Your Honor.

THE COURT: Okay. Let's move on to the ad hoc asbestos committee fee app. Mr. Esserman?

MR. ESSERMAN: Yes, Your Honor, we filed a supplemental paper which I assume Your Honor has reviewed.

THE COURT: Yes.

MR. ESSERMAN: We received two timely objections and one untimely objection from the U.S. trustee. We --

THE COURT: Mr. Esserman, putting aside whether the U.S. trustee's apparent sending you the document the day after

was due, if math is right, assuming that it committed an offense by doing that, doesn't the bankruptcy judge have an independent right even in the absence of any objection?

MR. ESSERMAN: Absolutely. And although we've objected to the timeliness, it does not detract in any way from the independent right of the bankruptcy judge to address all issues including those perhaps raised by the U.S. trustee. But I do point that out.

We have been able to resolve the objections of the government represented by Mr. Jones of the Treasury. We've withdrawn all fees related to the sale issues and have filed our amended request for $232,082.22. We've broken it down by categories of -- general categories: appointment of the futures rep which was $27,81.25; the bar date issues which we addressed, which was $37,048.25.

THE COURT: Now the bar date issues are those by Remy and Detroit Diesel, am I correct?

MR. ESSERMAN: No. That's a different issue. Those are what I'll call --

THE COURT: Oh, you said bar date.

MR. ESSERMAN: Yes.

THE COURT: Forgive me. Yeah, I need help on that because I thought that the debtor had asked for a bar date already.

MR. ESSERMAN: I'm sorry?

THE COURT: I thought the debtor asked me to set a bar date.

MR. ESSERMAN: Yes. And the question on the bar date was not just a bar date. The question was the timing, the notice provisions, how it was going to be noticed, what time asbestos claimants had to respond to that bar date. All those were in play. All those were in issues. The debtor had one view. We had another view of when the bar date should be effective, how it should be defined, who should have to comply. And all those issues, I believe, were worked out between the debtor and our ad hoc group.

THE COURT: Tell me what the bid and the ask was, what the nature of the difference in perspective was.

MR. ESSERMAN: I think, ultimately, the biggest issue -- and I will, to a certain extent defer it to Mr. Smolinsky to either refresh or change my recollection, but I believe the biggest issue was -- one of the biggest issues was the timing of when compliance had to be given to respond to the bar date.

THE COURT: So 35,000 bucks were for services to agree upon how many days --

MR. ESSERMAN: That was --

THE COURT: -- there would be to respond?

MR. ESSERMAN: That was just one issue, Your Honor. The issue -- I think there were definitional issues of who had

to respond. There was a question as to whether or not a bar date was even appropriate for unsecured asbestos claims, whether or not there should be a bar date. We ultimately agreed to the bar date. And I think the big issue -- a big issue was how you define who needed to respond and when. And I think all those issues were entailed in the bar date. Whether there were others that I forgot and Mr. Smolinsky can supplement me on or not, I don't recall any at this -- other at this time.

THE COURT: Now how did that dialogue benefit creditors of the estate generally as contrasted to asbestos claimants?

MR. ESSERMAN: Well, for one thing, it would be our view that if the bar dates and the definitions were used as the debtor had wished, the notice could well have been constitutionally infirm and could not have been binding on various claimants because they would not have received constitutional notice of the bar date, would not have been bound and would not have had an opportunity to comply because you have to remember that these people -- you're talking about a hundred thousand or more of widely dispersed claimants, some of whom are known, some of whom did not have lawsuits on file. So this was an important issue to make sure that the proper notice procedures and timeliness issues were given so everyone could respond so they could be both bound by a plan and

ultimately channel to an asbestos trust.

The other issue that we spent $72,970.50 on was the Detroit Diesel and Remy issues. And those had to be -- I believe we were the main opposition to --

THE COURT: In fact, you were the only opposition.

MR. ESSERMAN: I think we were the only opposition to both Detroit Diesel and Remy and were successful before the Court. The Court agreed with our position, disagreed with the position of Detroit Diesel and Remy. And we opposed their relief which would be to extend the protections of the automatic stay to them. And we think that --

THE COURT: And you're saying this was a benefit to the estate?

MR. ESSERMAN: Well, I think it was because people then went to Remy and Detroit Diesel to settle their claims instead of potentially trying to assert them against GM 'cause Remy --

THE COURT: Well, in substance, you were saying that lawsuits by asbestos plaintiffs should continue against Detroit Diesel and Remy, am I correct?

MR. ESSERMAN: Yes.

THE COURT: Now --

MR. ESSERMAN: And not against GM.

THE COURT: -- the debtor was protected by an automatic stay, am I correct?

MR. ESSERMAN: Yes.

THE COURT: And the debtor didn't file a response to that at all, am I correct?

MR. ESSERMAN: Yes. I believe that's correct.

THE COURT: And the creditors' committee didn't either.

MR. ESSERMAN: I think that's right.

THE COURT: And there was at least a contention by Remy and Detroit Diesel that they had indemnification rights against the estate, wasn't there?

MR. ESSERMAN: Yes. And that's dealt with the basis of their claim for protection.

THE COURT: Yes. And if any of those asbestos plaintiffs succeeded in the litigations, that could at least potentially increase the claims against the estate, couldn't it, by reason of that indemnification obligation?

MR. ESSERMAN: If that indemnification was, in fact, valid and proper. And if it was valid and proper, it might have even imposed grounds for an automatic stay.

THE COURT: Yeah. Go on.

MR. ESSERMAN: So we think what that did was redirected claimants to Detroit Diesel and Remy rather than to General Motors and that that did benefit the estate. And those are the components that we're seeking today.

THE COURT: That motion didn't involve a waiver by

either Remy or Detroit Diesel of their rights to file claims against the estate, the ones that were stayed by the automatic stay, did it?

MR. ESSERMAN: That's correct.

THE COURT: Go on.

MR. ESSERMAN: I made one error. I said that was the extent of our application. We also had $87,430.25 of costs and expenses which were -- which we categorized as asbestos due diligence which really got things going on the discovery for the aggregate estimation of asbestos liability, the extent of liability for General Motors, all of which investigations and inclusions that we reached were shared both with the future claimants' representative and the official committee of asbestos claimants and did not need to repeated in any way. That's the, I guess, the fourth component. And that's it.

THE COURT: All right. Anything else?

MR. ESSERMAN: That's all I have to say.

THE COURT: Mr. Masumoto?

MR. MASUMOTO: Good morning, Your Honor. Brian Masumoto for the Office of the United States Trustee. Your Honor, counsel is correct. Unfortunately, our office did file our objection on the 18th which was one day after the deadline. In part, there was some discussions in our office about the application which caused some delay. And one of the motivations for, in fact, filing the objection was because of

the perception that the original application did not identify relevant facts for the Court and particularly in the unique circumstances relating to the asbestos committee. And in addition, we felt that it did not satisfy its burden of proof of proving its substantial contribution.

I'm sure Your Honor is aware but we wanted to make sure that we had on the record that with respect to the official asbestos committee although it was appointed on March 5th of 2010 that the Court had rendered a ruling allowing the professionals or the counsel for the official asbestos committee to apply for compensation beginning in October 6th of 2009. And that certainly overlapped with the application being sought by Mr. Esserman.

In addition, with respect to the application itself, as we indicated it was strictly a chronological presentation notwithstanding a summary, a breakdown of the categories into the various areas that Mr. Esserman just addressed and which have been addressed in his reply. In that reply, I think, as the discussion that you had with counsel indicated, there's some substantial questions as to whether or not the efforts that were being -- the services that were being rendered on behalf of the asbestos committee benefited the estate as a whole or the individual creditors at issue putting aside the issue of whether or not some of those service overlapped.

With respect to one category that wasn't fully

discussed, certainly the original application, although addressed in the reply, was the efforts with respect to a futures claims representative. As the reply acknowledged, that early attempt at the appointment of a futures claims representative was originally denied arguably costing the estate additional funds and perhaps unnecessary funds in responding to it prematurely to a premature motion.

Accordingly, one of the concerns that we do have is the idea of professionals volunteering their services either prematurely or unnecessarily in anticipation of the actions of an official committee which would then increase the cost to the estate. For example, just hypothetically, in many cases an unsecured creditors' committee always has the option or the right to investigate the lien validity. If before the official committee sought to do that, some other creditor sought to preempt the committee's investigation and voluntarily begin that investigation on its own, we would not want to be in a position of having to consider the substantial contribution of those volunteer professionals.

Accordingly, we believe that the services that were rendered by the ad hoc committee had not sufficiently established in their application that they were either -- that were not either duplicative or solely for the benefit of the ad hoc committee members. And accordingly, we felt important to raise that issue with the Court and also to remind the parties

that, in fact, it was an unusual circumstances in this case in which the professionals for the official committee, in fact, had started to do work beginning in October of 2009. Thank you, Your Honor.

THE COURT: All right. Mr. Esserman, reply?

MR. ESSERMAN: Since lots of our time and effort were spent in October, November, December time period when Mr. Masumoto just argued that there was overlap with the asbestos committee, the asbestos committee was not appointed until March 5th, 2010. If you --

THE COURT: However --

MR. ESSERMAN: If --

THE COURT: -- didn't I nunc pro tunc Mr. Inselbuch's retention application back to October over the objection of the U.S. trustee?

MR. ESSERMAN: I was just going to get to that, Your Honor. Yes. And what I was going to get to was if you look at what they did during that period of time to address this overlap that our services performed, there was zero overlap. In fact, the total amount of fees that Mr. Inselbuch's firm billed from October, November and December was 11,000 dollars. And what he did during that period of time was mostly administration, internal administration for their committee and had nothing to do with any of the issues that we were addressing. So as far as the overlap concern, there was zero

overlap, as far as I can see, and notwithstanding your nunc pro tunc authorization, they did virtually nothing, nothing that was certainly anything that we were involved in.

THE COURT: Mr. Esserman, I have a recollection and I -- when I was reading the papers, I didn't note the source of that recollection, that amongst the services for which Caplin & Drysdale was compensated was not just getting themselves retained but also getting the future claims representative appointed and that your firm either as counsel -- as fiduciary, a professional for the claims representative or the claims representative himself, were also compensated for services incident to that retention. So between one and three fiduciaries of the estate were compensated for that appointment process. Am I mistaken in that understanding?

MR. ESSERMAN: I think so, Your Honor. What we've applied for for the appointment of future claimants' representative -- it's not just the future claimants' representative but we also sought appointment of the official committee of asbestos claimants.

THE COURT: Which was denied at the time you made it --

MR. ESSERMAN: It was denied initially but eventually both of those motions were granted. So I don't know if you can parse it so thinly because I think -- I think we were here pressing those issues. And if those issues were not pressed, I

think they wouldn't have come to ultimate fruition. And that is $27,817.25 of our application. But I think that those -- there was no overlap and no double charging for those services that we're seeking. That was mostly June of 2009 and a little bit after.

THE COURT: Okay. Continue, please.

MR. ESSERMAN: That's all I have in response.

THE COURT: All right. Thank you. All right. I'm going to do all the rulings today at one. So we'll take a ten minute recess and then I'll hear the Newman matter.

THE COURT: Mr. Jones, are you rising to be heard?

MR. JONES: Actually, Your Honor, I'm asking for permission to leave, if I may. This was the only matter I had an interest in.

THE COURT: Sure.

MR. JONES: I'm happy to stay if it would be helpful to the Court.

THE COURT: No. You've got permission to leave.

MR. JONES: Thank you, Your Honor.

(Recess from 11:09 a.m. until 11:20 a.m.)

THE COURT: Okay. Newman. I want to get appearances and then I have some preliminary questions I want both sides to address.

MR. SMOLINSKY: Your Honor, Joe Smolinsky for the Motors Liquidation Company GUC Trust.

THE COURT: Okay.

MR. DONOVAN: Good morning, Your Honor. Maurice J. Donovan appearing on behalf of Newman.

THE COURT: Okay. Thank you, gentlemen. Folks, as you know, under my case management orders, the initial argument on any matter unless prior arrangements have been made to the contrary is nonevidentiary hearing. It seems to me, subject to your rights to be heard, that one of the matters that's before me is a legal issue or a bundle of legal issues, maybe breaking down into four or five vis-à-vis whether the elements of the Newman claim are or are not for punitive damages. And it also appears that some of the matters that have been put in issue, most significantly GM's contentions that even if punitive damages couldn't be disallowed, there still hasn't been a showing that it did conduct of the type that would trigger or provide a basis for that.

Mr. Smolinsky, when it's your time to be heard, I would like you to let me know whether you contend that that's something that can be decided without an actual evidentiary hearing. It seems to me that the principle focus today is on whether punitive damages have been alleged here or not vis-à-vis each of the elements for which Mr. Donovan wants to proceed on behalf of the Green estate on behalf of Mr. Newman.

The underlying principle -- bankruptcy principles don't seem to be in dispute. If there is some kind of

difference in perspective on bankruptcy law that wasn't articulated in the papers, it's kind of late to raise that now but you better tell me.

It seems to me about the various elements of the claim. Now on a few of them, there may be another issue that is one that can be dealt with as a matter of law. But I have some questions about it and I'm not sure if I can deal with it as a matter of law. And that is, I have a claim for attorneys' fees. I need help on whether it can be stipulated to or assumed as a fact now or whether I need to clarify it later as to whether the Green estate was paying for legal services on a time for services basis and actually wrote out a check for those or whether this was a mini tort actions or a contingent fee basis. I need to know the extent, if any, to which the Newman was out of pocket anything beyond the twenty-two million dollars, or whatever the exact figure is, for which Old GM already wrote out a check. And I had thought from reading the papers that GM paid the compensatory aspects of this and that what we're now talking about is the consequences of GM's alleged discovery failures which, for the purpose of this argument, subject to your rights to be heard, it seems to me I have to assume that the fact of the failures should be taken as true but that the scienter associated with those failures is something that is still in dispute.

So with that said, you can make your arguments as you

see fit and you can address my questions at any time as long as you deal with them by the time you're done. I'll hear first from you, Mr. Smolinsky, then from you, Mr. Donovan, then reply from Mr. Smolinsky.

MR. SMOLINSKY: Thank you, Your Honor. Mr. Smolinsky for the GUC trust. I will address your questions, Your Honor, but I'd like to put it into an equitable framework because, at the end of the day, we are seeking equitable disallowance of this claim.

Your Honor, the debtors and now the GUC trust have worked --

THE COURT: Pause, please, Mr. Smolinsky. I want you to address, and also Mr. Donovan, whether anybody cares that we're dealing with this in contested matter form rather than adversary proceeding form. Presumably, you would be skinning the cat if I either equitably subordinated this claim or equitably disallowed it. In either case, your point is that the unsecured creditors shouldn't be writing out a check for punitive damages. Normally, we think of equitable subordination as requiring an adversary. I have ruled and Judge McKenna has ruled and I think it's becoming increasingly clear that, under Pepper v. Litton, which did exactly that, equitable disallowance is just as permissible as equitable subordination is. But do we have a procedural thing or should we just go straight to the merits of the issue?

MR. SMOLINSKY: Your Honor, I don't and I don't what Mr. Donovan has to say on the issue. But my view is there's a threshold contest -- matter that could be dealt with as a contested matter. Equitable subordination requires factual allegations of an inequitable act. We're not here saying that Mr. Donovan or his clients have done anything improper. We are taking the position that this Court, as a matter of equity, has the ability to equitably disallow the claim and to do that on a contested matter. That's our view, Your Honor. And then only if we lose that threshold issue do we get into an adversary proceeding which has already been the subject of litigation in New Jersey.

THE COURT: And, of course, your point is that if you didn't go through the ritual of a complaint, you'd be back where you started from making the exact same arguments you're making now.

MR. SMOLINSKY: That's correct, Your Honor.

THE COURT: All right. Continue.

MR. SMOLINSKY: And we don't believe that evidence is necessary so that may also argue in favor -- for this aspect of the hearing, that may also work towards finding that it's a contested matter that can be addressed on these papers.

Your Honor, the debtors and now the GUC trust have worked very hard in this case to resolve product liability claims so that we can get distributions into the hands of

claimants. Victims of automobile accidents with horrific injuries cannot look to insurance in this case, as Your Honor is aware, and therefore has to accept a pro rata distribution of New GM's stock and warrants.

The vast majority of claimants that have entered into the ADR process with the debtors have settled their claims consensually. As you can imagine, Your Honor, in virtually all product liability cases, punitive damages are ever present. Of course, their purpose is to defer future malfeasance by the debtor. But they also provide a way for the plaintiffs to seek recoveries beyond the full measure of their actual damages.

Insistence by the product liability claimants in this case on getting credit for the punitive damage allegations in their claims which often attach a complaint would have devastated the otherwise widely successful ADR procedures that have been used. Claimants in ADR, in mediation, have properly abstained from pursuing those types of damage claims in negotiations. And this has allowed the estate to treat all product liability claimants fairly and consistently by looking only to the measure of damages, actual damages and theories of liability.

After the mistrial in 1993, Mr. Green won a trial against General Motors in 1996 on his motor vehicle accident. The Court awarded him twenty-two million dollars which included a substantial portion of -- amount of interest as the full

measure of his damages. And it was based in part on a life plan. That means, a plan to take care of the maintenance of his person and his medical concerns up through the age of seventy-seven. And if you look at the award of the twenty-two million dollars, thirteen million of it was for the purpose of compensating Mr. Green for future medical and future lost earnings. And that's reflected in the appellate decision appeal of the underlying Green trial.

Mr. Green unfortunately died two years after the award at the age of thirty-one. Mr. Green had no dependents and that resulted in his heirs receiving a windfall based on the sooner than expected passing of Mr. Green.

In this case, Your Honor, the debtors don't object or deny that certain documents were improperly withheld from Mr. Green's counsel until after the second trial. We can debate whether that failure was intentional or unintentional but that's not really the issue here and certainly not the issue here today. The issue for today is whether Mr. Green's claim can stand at all in this case. Since Mr. Green won conclusively at trial without all the documents in question, and was paid for all of his actual and perspective damages, the only remaining claim that exists are for punitive damages or sanctions which, in effect, are punitive damages.

End of story. Mr. Donovan dresses up his claims to make it look like compensatory claims, compensation for failure

to be able to get punitive damages. But at the end of the day, they're all considered compensatory.

Taking us earlier back in the case, the claimant agreed to cap his 486 million dollar claim at seventy-five million dollars in exchange for the debtors' agreement to put this claim promptly into the court-mandated ADR procedures.

THE COURT: Pause, please, Mr. Smolinsky. I thought I heard you say that it was originally a 486 million dollar claim. For some reason, I thought it was unliquidated. Was I just -- don't be diplomatic. Was I mistaken in that regard?

MR. SMOLINSKY: I have to look, Your Honor. I believe that when we took a look at the papers we concluded that the totality of the unliquidated when you add it all together was 486 million dollars.

THE COURT: I see.

MR. SMOLINSKY: It could have come from the debtors reaching out and asking Mr. Donovan what the full amount of the claim was because, as Your Honor knows, we had to take all unliquidated claims and turn them into liquidated claims so that we could establish reserves.

THE COURT: Okay. Now I'm with you.

MR. SMOLINSKY: But we can get you that answer, though, Your Honor.

THE COURT: Well, I'm not sure if it matters. But I just thought I hadn't done my homework right. Go on, please.

MR. SMOLINSKY: You've never been accused of not doing your homework, Your Honor.

In discussing the cap, the debtors provided Mr. Donovan with the debtors' view that punitive damages should not be awarded in these cases because all it does is dilute the other creditors. We also provided Mr. Donovan with our view that in a liquidating case such as this one, there's even more precedent for the Court using its equitable powers to disallow those claims. And as we explained, it could be likened to what happens in a Chapter 7 case where there's a mandatory subordination of punitive and -- or multiple damages under 726(a)(4) of the Bankruptcy Code.

Notwithstanding our position on the merits, we did, in fact, initiate ADR as we had agreed to do and complied with our obligations under the ADR procedures to provide Mr. Donovan with a settlement offer that we believed was very meaningful. Suffice it to say that that offer was not accepted and we then proceeded to mediation which we held in New York. And that mediation failed to result in a settlement.

Mr. Donovan would like to engage in a prolonged and expensive litigation in New Jersey, the jury trial, to pursue his damage claim and then come back to this court to determine whether any resulting jury verdict could be allowed for bankruptcy purposes. He envisions a jury trial which, according to the pretrial order that was filed in New Jersey,

would include 123 fact witnesses and eight expert witnesses.

To the contrary, we're of the opinion that no trial is necessary. This claim should be and can be expunged and disallowed in its entirety based on the threshold issue of equitable disallowance.

Your Honor, with all due respect, we think this is an easy case. So many creditors in these cases have suffered greatly as a result of this liquidation and they will not receive full compensation for their injuries and losses. There's no deterrent effect in punishing Motors Liquidation Company or the GUC trust in order to prevent future malfeasance. So all punitive damage award accomplishes in this case is to dilute other creditor recoveries and provide the Green estate with an even greater windfall.

Your Honor, we cite to a number of cases in our papers. I'm not going to go over all of them. The Johns-Manville case, which is a Southern District New York bankruptcy case that discussed punitive damages, found that whether or not punitive damages are recoverable in bankruptcy, it is well within the authority of this Court to disallow a claim for punitive damages in the circumstances of this case where allowing such claim will ill serve the policy of such awards. In Novak v. Callahan, an Eleventh Circuit case, future wrongful conduct will not be deterred when the punitive damages are paid from wrongdoer's estate rather than from his own pocket. And

that's exactly what's happening here, Your Honor. These punitive damages, if allowed, would be paid by the estate and the creditors.

Just to name a couple of -- two more cases, the Williams v. City of New York case -- that's a Second Circuit case, 1974, 508 F.2d 356. There, the Court found, at page 359, "Unlike compensatory damages, punitive damages are assessed, punish the wrongdoer rather than restore the victim." In re Collins -- that's a Southern District New York, 44 B.R. 806 (1984) case. It says "Punitive damage claims are penalty claims. If, as is the case, punitive damages are to be paid not by the alleged wrongdoer but by his estate, the purpose of the penalty is not served. The effect would be to force innocent creditors sharing in the debtors' assets to pay for his wrongdoing. Such a result is clearly untenable and patently inequitable." And there's a long string of cases, Your Honor.

Now we do concede that there is a Supreme Court case, United States v. Noland. It's a 1996 case. And in that case, you can debate how broad the holding goes. But if you take a broad reading, it says that it's improper or inappropriate to categorically subordinate punitive damage claims without doing a case by case survey.

But the circumstances found in this case, including (a)the liquidating nature of the plan; (b)the fact that Mr.

Green was already awarded and received twenty-two million dollars in cash; (c)the fact that other product liability claimants are only receiving a portion of their compensatory damages; and (d)the fact that in hindsight, the compensatory damages that were awarded back in 1996 was far in excess of Mr. Green's actual damages, all way heavily in favor of equitable disallowance.

THE COURT: I don't know if it matters, Mr. Smolinsky, but when Michael Green passed on, did he do so as a consequence of injuries from the accident or from some kind of intervening cause?

MR. SMOLINSKY: I don't know, Your Honor. That would probably be a fact in dispute.

THE COURT: Okay.

MR. SMOLINSKY: But I will say that the allegation that the death might have occurred as a result of the delayed trial, there is compensation between the first trial and the second trial in interest that was paid. So he was compensated for that delay.

But even more importantly, the mistrial did not occur because of these missing documents. Without these documents in the second trial, Mr. Donovan was able to successfully win, blow the barn doors off this case and prove that GM was wholly responsible for the damage claim. And so, there is no, I think, proper position that because of the withholding of these

documents, there was a delay in the trial. And in fact, if you look at the appellate decision which appealed the Green jury verdict, the Court goes out of its way to find that the jury found and determined that roof collapse was the proximate cause of the injury and that a hundred percent of the injuries were solely attributable as to the design defect in the T-roof Camaro. The Court found that the jury disregarded the fact that the car was going eighty plus miles an hour in a twenty-five mile an hour zone as being relevant. So it's not as if the Court apportioned liability and gave Mr. Green less than his full damages. They won. And they got their full damages notwithstanding the absence of these documents.

So, Your Honor, I can speak now as to the different allegations Mr. Donovan -- the different types of claims that he claims are compensatory or I can wait until after Mr. Donovan presents. But the bottom line is that we believe that all of the claims that are asserted are really punitive in nature or sanctions in nature including the legal fees. And therefore, we believe that the Court, as a matter of law, or using its equitable powers here can disallow the claim in its entirety without any factual determinations or any trial.

THE COURT: I think which category his individual claims goes in or should go in is one of the most important issues. And I'm not comfortable with giving you the last word on that without giving Mr. Donovan a chance to respond. So I

would like your view on the particular claims. And then I'll give Mr. Donovan a chance to give me his view. And then when you get your chance to reply, it'll be limited to what he says.

I assume that what we're talking about is the stuff that he has on pages 5, 6 and 7 of his response. But I will hear whatever you have to say on that just like I'll hear Mr. Donovan on those issues.

MR. SMOLINSKY: Let me see if I can run through them, Your Honor, and if I miss any, I'll come back. One is the spoliation of evidence that is claimed to be a tort that is entitled to compensatory damages. Mr. Donovan cites the Rosenblit v. Zimmerman case for the purpose that spoliation of evidence is a separate tort. That case, I believe, Your Honor, is 766 A.2d 749. It's a Supreme Court New Jersey case.

But the Court found there -- the Court says that "When spoliation occurs, the law has developed a number of civil remedies, the purpose of which is to make whole, as nearly as possible, the litigant whose cause of action has been impaired by the absence of [critical] evidence; to punish the wrongdoer; and deter others from such conduct."

So the first element is to compensate for what would have happened had the documents not been -- had been there. But as I indicated, the Court found that we were entirely responsible for all of the actual damages and future damages that were incurred by Mr. Green and he was paid in cash for

that; the second element, to punish the wrongdoing, that's punitive -- the equivalent of punitive damages; and deter others from such conduct -- not relevant here, we would argue.

The next cause of action is New Jersey RICO. And for that, Mr. Donovan cites Paul St. James v. Future Finance Creative Development Enterprises, 776 A.2d 847. There, the Court says, "We agree with the cases which suggest that the amount of the punitive damages awarded to defendant should be reduced by two-thirds of the N.J. RICO award to reflect the duplicative punitive aspect of the overall award." So there again, the Court says, under RICO, you can get three times the damage award, but, in reality, the first third of it is compensatory damages. Those are the damages that Mr. Green has already received. And the second two-thirds of the award is purely punitive and duplicative of the compensatory damages.

With respect to treble damages, you could look at the case of Liberty Mutual Insurance Company v. Rose Land and Frank Land -- that's 892 A.2d 1240. That goes to treble damages generally for punitive damages. Under New Jersey, punitive damages are capped at three times the amount of actual damages. And it says, "The Punitive Damages Act" -- it actually cites the statute in New Jersey for punitive damages. "The Punitive Damages Act defines compensatory damages [are] 'damages intended to make good the loss of an injured party, and no more,' and punitive damages as damages intended 'to penalize

and to provide additional deterrence against a defendant to discourage similar conduct in the future.'"

By that definition, only one part of the treble damages award covers compensatory damages and the other two parts compose punitive damages.

So I don't know if I missed any, Your Honor, but there are various arguments espoused by Mr. Donovan but it's all variations on the same theme.

THE COURT: Well --

MR. SMOLINSKY: Mr. Green has been compensated.

THE COURT: -- I don't know whether you missed it or not but, for instance, on page 5 in paragraph 12(a)(ii), they talk about attorneys' fees and costs of the second trial. If the decedent or his family had written out a check for that, I can see how that might be argued to be compensatory. To what extent do I have evidence in the record as to whether or not that was done?

MR. SMOLINSKY: That was my last point, Your Honor, with respect to attorneys' fees.

THE COURT: I'm sorry. Okay. Then --

MR. SMOLINSKY: No. It's --

THE COURT: -- proceed. Go ahead.

MR. SMOLINSKY: -- quite all right. I believe that this was all contingency and therefore there wasn't a check written out for the costs of the trial. If you look at the

cost of the trial, Mr. Donovan says that two million dollars was spent on the trial and then all of this litigation with respect to the punitive damages. The attorneys' fees with respect to the punitive damages, in my view, at most, are sanctions and therefore, are not compensatory. With respect to the second trial, to the extent that costs were paid by the Greens' estate for that trial, I can only say that when we went into ADR, we made a settlement proposal that we think was quite fair that would cover --

THE COURT: Careful on Rule 408.

MR. SMOLINSKY: And, Your Honor, I'm not getting into the settlement discussions. I think it's fair to say that we complied with the ADR procedures. We made an initial offer. And while I do believe that the cost of the second trial -- the trial was not lost because of the lack of these documents. I don't know why the first case resulted in a mistrial. But with the same pool of documents, the same evidence, Mr. Donovan was able to succeed in the second trial.

So I don't think there's proximate cause, if you will, for the inability to have access to these documents. I don't think that connects to the cost of the second trial. And so, I guess, just in conclusion, I don't think the Green estate paid for the attorneys' costs other than through the contingency. I think that future attorneys' fees are more in the nature of sanctions. And I believe it wasn't caused by this issue, the

cost of the second trial. It's really the expenses after that that we should be talking about.

THE COURT: You said you think attorneys' fees should be regarded as sanctions. Aren't -- sanctions have a punitive element as well --

MR. SMOLINSKY: That's right, Your Honor.

THE COURT: -- although when we grant sanctions, we usually measure the amount of the sanctions by looking to the cost to undo the mess. How do you think I should look the sanctions punitive distinction if there should be a distinction?

MR. SMOLINSKY: I'll only say at this point that I do believe that it's punitive. I think sanctions are for the purpose of deterring future malfeasance. And therefore, it is punitive. To the extent Mr. Donovan has a different view, I'm happy to address it on rebuttal. But I don't see why -- since he won an award that would include all damages which takes into account all of the costs associated with the trial, to the extent he was entitled to -- to the extent he was entitled to attorneys' fees as part of the underlying trial on Mr. Green's actual remedies, that was addressed in connection with the second trial. Anything beyond that results in penalty for the discovery situation and therefore, in my mind, is sanctions equals punitive. There's no distinction.

THE COURT: Okay. Thank you.

MR. SMOLINSKY: Thank you, Your Honor.

THE COURT: Does that take care of your needs, Mr. Smolinsky?

MR. SMOLINSKY: For now, it does, yes.

THE COURT: Okay. Mr. Donovan, can I ask you to come to the main lectern, please?

MR. DONOVAN: Good morning, Your Honor. Maurice J. Donovan appearing on behalf of Mr. Newman as the executor under the will of Michael Green and one of the claimants in this matter. First, I want to thank the Court for allowing me to be here this morning to address these issues. They are kind of interesting compared to what else I've heard this morning, I think.

When I first met Mr. Green twenty-five years ago, he was a young man lying in a hospital bed. His neck had been broken because General Motors put on the market a defective IROC Camaro.

THE COURT: Pause, please, Mr. Donovan. With respect, you can't talk to me like you talk to a jury. Your client was already compensated for his injuries when you won the second trial. I need you to hone in on the legal issues that we're wrestling with and on the factual issues or mixed questions of fact and law as to how we categorize the various elements of your claim.

MR. DONOVAN: And I can do that and intend to do that,

Your Honor. But I think we need to understand that this Court is a court of equity. The equity swings both ways, both in consideration of Mr. Smolinsky's request that this claim be extinguished but also the other way that this claim is so important in terms of the fraud committed by General Motors in the discovery practices that those equities militate in favor of this claim going forward. And I think that, whether we classify these claims as compensatory or punitive, whether we set the standard as a negligent standard or gross standard or a willful standard in a spoliation case, no matter how we parse those issues, the bottom line comes down to whether this Court is going to exercise its equitable powers in order to extinguish a claim. And the problem with that being is -- you know, Mr. Smolinsky argues that it would have no relevance. Well, it does have relevance because if this Court was going to extinguish this claim, what it would be telling General Motors is that the new General Motors could engage in the same practices that the old General Motor engages; that is, sending documents through a maze and hundreds of different hands and people so that they would never be found and never be produced. GM made a willful decision in this case not to produce these smoking gun documents. These documents say that GM knew that this car they put on the market was defective. They say they analyzed the various strengths of alternative designs, that the alternative designs were better designs, safer designs, more

crashworthy designs. And yet, they decided to put the IROC Camaro on the market because it had a more macho appearance. And that more macho appearance translated into more dollars into the coffers of General Motors.

That's what underlies this case. And those documents, those smoking gun documents is what for the last -- since 2001, we have been trying to redress against General Motors when this bankruptcy was filed. And should this Court put its imprimatur on the dismissal of those claims, what this Court is saying is that GM has gotten away with fraud. Fraud upon -- in this case and whatever other case it did the exact same thing of secreting documents and can do it again in the New GM and it also says to every other defendant in a litigated matter that they, too, can hide documents and thwart the discovery process. Just as long as they filed bankruptcy, they can get away with it and especially if those claims are punitive.

Now, Mr. Smolinsky kept saying that somehow GM is here to protect so the other people who are injured by their defective products won't get full compensation. That's not Mr. Green's fault; that's General Motor's fault. They decided to file for bankruptcy. They decided to not honor these claims. And they very could -- New GM could very well decide to pay off each and every one of these individuals who was grossly injured by GM's uncrashworthy vehicles. They could do that. New GM could take the right path and say, we're going to do what we're

supposed to do. If you prove we have a defective car, we are going to pay that because that is our obligation and that is our moral duty to do. But no. They hide behind this bankruptcy court and say to Your Honor that Mr. Green, who was deprived of a viable claim, a claim for punitive damages for putting on the market a car that GM knew was unsafe in its design and had the potential of causing devastating injuries like the quadriplegia Mr. Green sustains. They would be walking away from this situation.

And that's what's unfair here, Judge. When GM says, oh, we want to make sure everyone is compensated even if it's to a small amount, that is so disingenuous. GM has battled this litigation, I know from first-hand for twenty-five that I've been involved with it. I tried both the Green 1 and Green 2 cases. I know -- there's no one around who knows more about these cases than I do. So that's a little disingenuous argument.

The claims here -- I mean, I can describe to you -- and we can play a semantics game. But basically, what Mr. Green was deprived of by not having these documents in the first trial was two things. A cause of action for punitive in that first trial, Green 1, as well as having the proofs necessary to show that GM had an alternative design and what it was. What Mr. Smolinsky probably doesn't know is that between Green 1 and Green 2, we had to change experts because the first

expert had a stroke. The first expert and the second expert had different alternative designs. The second alternative design in the second Green trial was exactly the alternative design, unknownst (sic) to us at that point in time, that GM had considered and tested. The first alternative design in the first Green case was something entirely different. Had we had those documents, we would have had the alternative design that we presented in the second trial in the first trial. So that's what we were deprived of there, proofs in the case which necessarily would have convinced a jury in the first trial that GM had put on the market a defective vehicle.

Now the claim for punitive damages is different in this litigation. There is no claim for punitive damages in this current litigation premised on the fact that GM put on the market a dangerous product. Okay? There is no claim for that. That claim would have been litigated in the first or the second Green trials. What is sought here is damages for the deprivation of a claim which Mr. Green would have had in his earlier litigation.

Now, just as Your Honor said a few minutes ago --

THE COURT: Pause, please, Mr. Donovan. A claim for what?

MR. DONOVAN: A claim for -- his claim here is for the loss of that cause of action in the cases below. And just as Your Honor said about sanctions, are sanctions attorneys' fees,

and you kind of couched it almost the same way I do. The sanction is different than how we value it. We say someone did wrong and we're entitled -- we're going to impose a sanction. Then this next step is how are we going to value that sanction. Should we put the person in jail? Should we deprive their client of something? Should we do it evidentially? Or should we use attorneys' fees. Attorneys' fees set the quantum of damages for the sanction. They are not the sanction.

Just as in this case, punitive damages in the underlying case may set the quantum of damages for the deprivation of the claim which Mr. Green lost but they are not punitive damages. They are compensatory damages in this litigation.

Now there are punitive damage claims in this litigation. There is specifically a punitive damage claim sought for GM willfully secreting documents during discovery, for taking these smoking gun documents and hiding them in amongst thousands of documents and never producing them. That is a punitive damage claim which I will concede.

And there are other claims here. Mr. -- you asked whether there was out of pocket. Mr. Green put out of pocket one million dollars in order to pursue this litigation. Out of pocket.

THE COURT: Such as by advancing costs or expenses?

MR. DONOVAN: Absolutely. And that million dollars is

gone.

THE COURT: Okay.

MR. DONOVAN: Attorneys' fees --

THE COURT: Pause, please. Was that one million bucks extended before trial number 1, between trial number 1 and trial number 2 or after trial number 2 --

MR. DONOVAN: After --

THE COURT: -- or some combination of those?

MR. DONOVAN: After he got paid by General Motors in 1999. He put forth a million dollars to pursue this litigation. He was still alive at that point. He died two years after he got his money, never really enjoying any of it.

THE COURT: Okay. Pause for just a second.

(Pause)

THE COURT: Continue, please.

MR. DONOVAN: With respect to the attorneys' fees, all of the matters were taken on a contingency basis including this one. But attorneys' fees on a contingent basis with reference to the deprivation of the claim under Rosenblit may be contingent. But under the RICO, attorneys' fees are one of the causes of action, the damages as part of that cause of action. So therefore, if we prevail on that particular aspect of this that attorneys' fees would not be a sanction, they would not be -- they would be part of the cost of pursuing that particular cause of action.

Now the fraud here as attested to by Magistrate Patty Shwartz, who -- I don't know if you follow local New Jersey judges -- who has just been nominated to go from a magistrate to a Third Circuit judge -- wrote a hundred page opinion in which she describes the fraud in which she describes the fraud committed by General Motors. That was part of a privilege hearing where she decided to waive General Motors' attorney/client privilege under the crime/fraud exception to attorney/client privilege. So she had to have found the prima facie case of fraud in order to waive the attorney/client privilege. That decision of Judge Shwartz was then affirmed by Judge Hayden, who was the district court judge sitting on this matter, as well as went to the Third Circuit and three judges including Maryanne Trump Barry -- also affirmed that decision.

When you read her opinion, though, you see an awful lot of blank -- black marks. That part of the opinion has not been released. We don't know what that says because when this litigation -- when this bankruptcy was filed, we were in the Third Circuit trying to get all of that litigation released. So we don't even know what good stuff is in that opinion that she held. We don't even know what the good stuff is that was in hearings, in camera hearings, during the privileged hearing that we don't know about.

The fraud here is --

THE COURT: Pause, please, Mr. Donovan. I assume your

point, though, is that you're assuming or asking me to assume, at least for the purposes of discussion, that it will show that GM acted badly.

MR. DONOVAN: I don't know any other reason why they would battle so valiantly to keep it hidden.

THE COURT: But let me sharpen my question because you answered it the way I asked it. But your point is that the stuff that was redacted would go to either GM scienter or its evil motive or its evil conduct but as compared and contrasted to some damages of which the magistrate judge was aware that you didn't already collect on of a compensatory character.

MR. DONOVAN: Absolutely.

THE COURT: Okay. Continue, please.

MR. DONOVAN: Absolutely. The fraud committed here should be of particular concern to this and every other Court because it was fraud that attacked the very foundation of litigation, the exchange of discovery and the search for the truth. By hiding these documents, GM sought to deprive the plaintiff and anyone else who knew about this knowing what they had done in putting this car on the market which was to put a defective vehicle on the market.

And I alluded to a minute ago the standard for spoliation and I disagree with Mr. Smolinsky in the sense that only a willful spoliation is actionable. And I don't think that's true. And I think that's clear in the case of Pension

Committee of the University of Montreal Pension Plan, which is 685 F.Supp.2d 456, this district in which the Court said that you can have a negligence spoliation, you can have a grossly negligent spoliation or you can have a willful spoliation. Either of those standards can apply. However, it may determine what the sanction is and how the sanction is applied. For instance, if you were willful, we may dismiss your whole case or we may strike all of your defenses. If we have a negligence spoliation then maybe we'll give you an adverse inference at trial or maybe we'll impose a monetary sanction. But the standard is not that I need to prove in this case that the spoliation was intentionally or willfully committed. That simply isn't true by that case and a very recent case in the district of New Jersey by Judge Salas, Magistrate Salas then; she is now a federal judge. Magistrate Salas --

THE COURT: Magistrate judges are already federal judges.

MR. DONOVAN: Yeah.

THE COURT: Go on, please.

MR. DONOVAN: Well, I'm sorry. She is now a district court judge. My error -- in which she found attorneys responsible for spoliation of evidence because of their negligence in not properly overseeing their client's retention of documents in the case. Clearly a negligent standard and clearly very akin to this litigation which is pending here.

But more importantly, in the Pension Committee case is this language because this is what should tilt the scale in favor of not dismissing these claims. And it talks about the inherent power, the equitable power of the Courts in situations such as this. It says, "The policy underlying this inherent power of the courts is the need to preserve the integrity of the judicial process in order to retain confidence that the process works to uncover the truth. The courts must protect the integrity of the judicial process because, as soon as the process falters the people are then justified in abandoning support for the system." And maybe that's why those people are over there on Wall Street with their tents and with their tarps because in this situation, General Motors is seeking something that if they were an individual debtor in a Chapter 7 proceeding and they had gone -- and the debtor had gone out and secreted documents and was able to obtain a mortgage or a loan and walked with a hundred thousand dollars and then filed bankruptcy the same day, this Court would never countenance in getting away with that. They would say, huh uh, you pay back that money.

But that's what General Motors wants to do here because, under Chapter 11, it doesn't have the same case law behind it in terms of fraud or it doesn't have the same statutorily language as it does. But that's what they want you to do. They want you to say, we hid these documents. We tried

to disrupt the litigation. And we want to walk away from it scot free, Judge. We want to walk away with your imprimatur as a court of equity saying that was all right, General Motors. That was all right. And with no consequences of that.

And that's what I submit to you trumps all of the other legal issues whether these are compensatory or punitive damages, whether it's a negligent standard or a gross negligent standard and any of the other -- the argument over whether John-Mansville (sic) applies here because, really, they were talking about a trust for future asbestos victims or whether the Robins case applies here because, really, that was a reorganization and they needed to keep the money in order to have the company become viable. We can argue that till we're blue in the face. But we're talking about equity here. Equity. And that's what I would urge this Court to do is not deny this claim and say no, go ahead with this claim. If you can prove General Motors fraudulently secretly documents as part of a pattern of discovery which they engaged in in order to deprive claimants of rightful claims, well, I don't think that would be right. I don't know if there's anything else you'd like.

THE COURT: Thank you. Okay. Mr. Smolinsky, reply. As usual, limited to what Mr. Donovan said.

MR. SMOLINSKY: Your Honor, as an initial matter, I just want to point out that what Judge Shwartz found was not

that GM committed fraud. The issue was whether plaintiffs had asserted a prima facie case that, under the broad definition of fraud as set forth in the Ocean Spray Cranberries, Inc. v. Holt Cargo case, whether it satisfies the necessary criteria for opening up the privilege. And that's what the Court found. This was not a trial on whether GM committed fraud nor was that the holding of the case.

Mr. Donovan's passionate arguments keep coming back to one basic point. As a matter of equity, you can't let GM walk away scot free. You can't let GM walk out of the room and say, I got away with fraud. I think that was his words. But if Your Honor allows this claim to stand and to go forward and, God forbid, go to a trial and then -- a jury trial and then come back to this court, you will have New GM standing there and saying perhaps I got away with fraud, I got off scot free, because there's no way, under this bankruptcy case, that any element of the result of this issue, if it were tried, would blow back to General Motors. This is --

THE COURT: To new General Motors.

MR. SMOLINSKY: To new General Motors. This is an indictment of maybe the process of discovery in large cases. Maybe things have changed. I don't know. But all I know is that when you look at the equity of these cases and the equity of the impact of this claim on all creditors, you're making the individual creditors of this estate pay for the acts of General

Motors Corporation. And it's not General Motors Corporation that's paying the bills of the creditors.

And I keep coming back to that issue. Mr. Green was fully compensated for all of his losses. And that's where this issue should end.

With respect to the attorneys' fees that were out of pocket, I don't know if that becomes a factual issue. I -- that's something for Your Honor to consider. But I do believe that it was to pursue a claim that, unfortunately -- and this happens from time to time. When you're pursuing a claim and the defendant goes into bankruptcy that you end up losing that claim. And it's unfortunate that that's a situation which happens in all bankruptcy cases. And to the event it rises to the level of sanctions then, as I said before, I believe it's simply punitive and the creditors of these estates should not be forced to foot the bill.

I don't have anything else, Your Honor, unless you have any questions.

THE COURT: All right. No, I don't. Thank you. All right. Here's what we're going to do. On the final matter we handle today, Newman, I'm taking that under submission. And while I don't know the degree of formality upon which I'm going to write the decision, it will be a written decision. It will not be a dictated decision.

On the remaining three matters, I want you folks to

take a long lunch and to be back here at 2:00 at which time I will dictate my rulings on the three matters for which I took oral argument before the Newman matter. Anybody -- most obviously, you, Mr. Donovan, who has no interest in the matters that others are coming back for, is free to leave. All right. We're in recess. Thank you.

(Recess from 12:15 p.m. until 2:19 p.m.)

THE COURT: Good afternoon. Ladies and gentlemen, in this contested matter in the Chapter 11 case of reorganized debtor, Motors Liquidation Company, formerly known as General Motors, the GUC trust, which was formed under the plan for, among other purposes, protecting the interests of Old GM's unsecured creditor community, objects to three proofs of claim filed by Mr. William Kuntz, III. The GUC trust contends that they failed to describe the basis for the claims and lack all of the things that are necessary to even establish a prima facie claim against the estate.

The GUC trusts objections are sustained and the claims will be expunged.

On September 16, 2009, I entered a bar date order establishing November 30, 2009 as the deadline for filing all proofs of claim in these Chapter 11 cases. Prior to the deadline established under the bar date order, Mr. Kuntz filed three proofs of claim against debtor "General Motors". Two of the claims were dated July 29, 2009 and a third was dated

August 23rd, 2009. For each, Mr. Kuntz utilized the Court's official Form 10 for filing proofs of claim which form was the same in all material respects as the form that I approved when I entered the bar date order.

As is fundamental, a proof of claim sets forth the facts necessary to support the claim for the claim to receive the prima facie validity accorded to proofs of claim under the bankruptcy rules. See In re Chain, 225 B.R. at 280 (Bankr. D.Conn. 2000) and In re Marino, 90 B.R. at 28, another case from the district of Connecticut, this one in 1998, these being two of the many cases cited by my colleague, Judge Peck, in addressing claims filed by Mr. Kuntz in other bankruptcy proceedings in this court, there the Lehman Brothers bankruptcy. See also Ashford v. Consolidated Pioneer Mortgage, 178 B.R. at 226, which was affirmed by the Ninth Circuit thereafter, and In re Allegheny International, 954 F.2d 173-174.

My bar date order further articulated the requirements for establishing a prima facie claim. According to the bar date order, all proofs of claim had to set forth with specificity the legal and factual basis for the alleged claim and include supporting documentation or an explanation as to why such documentation is not available. See page 2 of my bar date order at docket entry 4079.

In addition, the Court's official Form 10 and the form

that I approved both required, on their face, that a claimant "state the type of debt or how it was incurred". In two places on the forms, the claimant was instructed to "attach redacted copies of any documents that support the claim". In addition, the form explained that a claimant "may be required to provide additional disclosure if the debtor, trustee, or another party in interest files an objection "to such claim".

In this case, Mr. Kuntz filed nothing more than a one-page form for each of his three claims. Mr. Kuntz wrote on one claim for 300 dollars that it is a claim for "mail fraud/bait and switch by a GM dealer." But it said nothing more and no attachments that accompanied the claim.

Moreover, to the extent it said anything, it alleged wrongful conduct by a GM dealer not by GM and did not allege, assuming arguendo that it might be sufficient to do so, even that the dealer was acting at GM's direction.

Second claim. Mr. Kuntz wrote there seeking 4500 dollars that it is for a "Chevy truck" and next to the words "Chevy truck," Mr. Kuntz wrote "See attached" even though, like the other claims, nothing was attached. No attachments accompanied the claim.

On his third claim which was in the amount of 2400 dollars, Mr. Kuntz wrote that it is a for "file cabinet with GM dealer, Willsboro, NY". As with the others, this baffling description was not accompanied by further details.

At the risk of stating the obvious, neither the claim that I just quoted from, nor the other two, came close to meeting the requirements under the Code, the rules and the official forms, much less my earlier orders, for laying out a prima facie claim.

The GUC trust says that these claims "do not include sufficient documentation to ascertain the nature or validity of such claims. See omnibus objection, paragraph 9 in Exhibit A as amended. And of course, the GUC trust is right in that respect.

On October 21st, my Court received a response by Mr. Kuntz to the GUC trust objection. Then he purported to add meat to his earlier proofs of claim. He explained that his claim for 300 dollars was connected to a free gas card promised in exchange for a test drive and credit application. He described the claim for 4500 dollars as a claim for the loss of an old Chevy truck that Mr. Kuntz purchased from his Uncle Don. And the claim appeared to reflect cause for towing the truck and perhaps other expenses relating to a citation issued by the police because the truck was blocking the sidewalk. Mr. Kuntz' explanation was unclear and in no way explained how he was entitled to a claim of 4500 dollars from the old General Motors estate. And his response also addressed his claim for 2400 dollars explaining that it represented the loss of a fireproof file cabinet which he blamed on a small dealer exit program.

These explanations were impossible not just difficult to follow. They lacked logical coherence but, more fundamentally, the supporting documentation and/or explanation that is essential to a filed proof of claim.

Finally, on October 26th, Mr. Kuntz submitted a further response after the GUC trust had filed a reply once more failing to advance or substantiate his claims in any reasonable or comprehensible measure.

Because his claims are so lacking in supporting evidence and logical linkage to the debtors' cases, most fundamentally in showing anything that Old GM even allegedly did that was wrong, they're not entitled to any presumption of validity that otherwise attaches to most creditors' proofs of claim.

Justice Sonya Sotomayor, now of the United States Supreme Court, when she was a district judge sitting in this district, observed while ruling against Mr. Kuntz in one of the many other matters in which he has appeared as a litigant that his "status as a pro se litigant is of little import," because even back then, in 1993, he had already "amassed litigation experience that would embarrass the majority of associates and some partners at large New York law firms" while demonstrating a "consistent patter of vexatious litigation and little respect for the Courts or other parties". See Kuntz v. Pardo, 160 B.R. at 39.

Unfortunately, here, we have more of the same. Assuming without deciding that a bankruptcy claimant with this kind of track record would still be able to assert a claim if a sufficient basis for it had been shown, that doesn't help Mr. Kuntz here. His various submissions simply can't show the existence of a debt, at least one that's owed by Old GM.

The GUC trust is to settle an order expunging the claim. The time to appeal from this determination will run from the time of the resulting entry of the resulting order and not from the time of this dictated decision.

Just a moment, please, folks.

(Pause)

THE COURT: Next. In this contested matter in the jointly administered Chapter 11 cases of Motors Liquidation Company, formerly known as General Motors Corporation and its affiliates, an asbestos valuation consultant called Analysis Research Planning Corporation applies, pursuant to Sections 330 and 331 of the Code, for compensation for the services it provided to the legal representative for future asbestos personal injury claimants which we more typically refer to simply as the future claims representative.

The application has engendered two objections, limited objections in part, one by the debtors who object to the payment of fees for services after January 26, 2011 (sic), the date on which a key stipulation resolving obligations to

asbestos claimants was signed, and another by the fee examiner in these cases which makes a like objection but which is applicable only to the date after that earlier stipulation I just mentioned was approved.

The fees, except insofar as objected to, are approved. Both objectors' objections are sustained for the period from and after February 14th. And in addition, the estate's objections are also sustained for the period between January 21st, 2011 and that February 14th date for the reasons that follow.

The underlying facts are not in dispute although the inferences that flow from them and the conclusions that must be drawn from the explanations I was given require me to make findings in this area, probably mixed questions of fact and law, as to the reasonableness of services after the two dates in question. As facts or as mixed questions of fact and law, I find that services after each of those two dates, and particularly the latter, were patently unreasonable and cannot in any way, shape or form be tagged upon the remaining creditors in this case.

Under Section 330(a)(3) of the Code, when determining the amount of reasonable compensation to be awarded to a professional, under familiar principles, I must consider the nature, extent and value of such services taking into account all relevant factors including (1)whether the services were

necessary to the administration of the case -- and I interrupt myself to say, for the avoidance of doubt, here, after each of those two dates, they were not; (2)whether the services were beneficial at the time at which the services were rendered -- and I once more interrupt myself to say that, here, they were not; (3)and whether the services were performed within a reasonable amount of time commensurate with the nature of the task addressed as to which I, here, need make no finding because the first two factors are so clear.

Also, under Section 330(a)(4), I should not allow compensation for unnecessary duplication of services where services that were either not necessary or not likely, reasonably likely, to benefit the debtor's estate.

Since there is no objection, I'm not going to make extensive findings vis-à-vis the portion of the fees that did not warrant any concerns. It's sufficient for me to say that they were fine and I have no problems with them. But although those in the room know that I'm not speaking in anything other than a conversational voice, and I'm certainly not raising my voice, I am very, very troubled, disturbed and indeed annoyed at the request insofar as it deals with the period after the two key dates for which the objections related, and particularly the services, 3,700 hours that were spent after a deal had been struck.

On January 21st, 2011, the four parties with the

highest stakes in the valuation of the debtors' asbestos claims -- that, of course, being the purpose for which Analysis Research Planning Corp. was retained to act, those being the debtors, the creditors' committee, the official committee of unsecured creditors holding asbestos related claims, which we refer to, in short, as the asbestos creditors' committee, and the future claims representative all executed a stipulation fixing the amount of the debtors' aggregate liability for asbestos personal injury claims. They reached an agreement to fix those at 625 million dollars. But the amount of the settlement isn't important; it's the fact of the settlement that's so critical.

Now that settlement was reached after earlier litigation, most significantly, a motion previously filed by the debtors seeking to estimate their aggregate liability for asbestos claims at an earlier time. And it goes without saying that whatever reasonably was required, from the time that the controversy arose when the debtors filed a motion up to the time of the stip, is a price that just needs to be paid. But that February 21st date was a watershed event. The purpose for all of that estimation then came to an end.

Now we have a slight difference in perspective between the debtors, on the one hand, who start their objection running on January 21st, and the fee examiner's perspective who, out of discretion or kindness or common sense or giving somebody a

break, says he won't object until after February 14th when the stipulation was ultimately approved.

The fee examiner's later date is not a reasonable one but I reject it because of the total lack of any measures to do a stop, look and listen to evaluate the risk that there was any possibility that the stipulation would be disapproved. I asked questions as to that to both counsel. Did anybody telegraph an intention to object to that stipulation? Were there any objections? Did anybody pick up the phone and say we're thinking about objecting? Was there any probable cause to believe that there was an objection? Every single one of those answers was expressly or impliedly no. It should have been pencils down at that point. Indeed, except for a relatively modest thirty-nine hours that were spent by the asbestos committee's counsel, all of the other people similarly situated did go pencils down, much less not run up 3700 hours.

Incredibly, Analysis Research Planning Corporation continued incurring fees not only after the execution of the stip, but also after I so ordered the stip in February. That, of course, underlies the fee examiner's objection. In fact, the consultant's fees increased dramatically after the stipulation was executed.

More shocking still, Analysis Research Planning Corporation's highest per month fees in these cases were incurred during the month that followed my so ordering of the

stip. They went up to 116,000 dollars for the month of February 2011 and 204,000 in fees for the month of March 2011.

Now I got a couple of explanations for all of this. One related to the fact that a high volume of documents was produced for review shortly before the January 21st stipulation was entered into. But as debtors' counsel properly observed, that simply is irrelevant. Assuming, as was obviously the case, that the future claims representative could do enough to enter into the stip, once the stip was entered into, there was no purpose in engaging in the late produced documents any more than there was a purpose in reviewing the earlier produced documents. It should have been pencils down. Obviously, it wasn't.

The next explanation I was told was that Analysis Research Planning Corporation was told by the futures claim representative that it should keep working. Kind of like the devil made me do it. That is an unacceptable answer. Any party that is retained as a professional in a Chapter 11 case in this district, and I'll go so far as to say in any bankruptcy court in the United States of America undertake statutory duties with which it must comply if it wants to get paid. It also owes a responsibility to, first, its constituency and to the system to act responsibly. As I noted, there were there others in the same boat. One of them put in only a minimal amount of time and the others put in none at

all. It was patently irresponsible and it cannot be the law that one can be cleansed of its duties to comply with the requirements of law by saying that one's client made him do it or told him to do it. In fact, if that ever were the law, it would result in a kind of laundering of the requirements that we impose upon professionals for responsible activity.

Now it goes without saying that we don't look at these things solely in hindsight. We look at services and their reasonableness at the time they are rendered. And if, by way of example, it had turned out that the services were reasonable when rendered at the time but later didn't turn out to be such, I wouldn't be disapproving them at all, much less being as annoyed as I am with respect to this application.

Here, a settlement had been entered into. There was no reason whatever to believe that it would be disapproved. At the time, no reasonable professional would have put in 3700 hours or anything close or, I dare say, even more than the slightly excessive thirty-nine hours that were put in by the asbestos committee. The very fact that caused the other two to not do anything thereafter was so obviously the right thing to do.

In In re St. Rita's Associates Private Placement, LP, 216 B.R. 490 (Bankr. W.D.N.Y. 1998), the bankruptcy court evaluated the reasonableness of services performed once a settlement was "in prospect". The St. Rita's court determined

that the professionals should have deferred its work until the outcome of the settlement had become known because such settlement would render the services unnecessary. See 216 B.R. at 498.

Another explanation I was told was that either Analysis Research Planning Corporation or the future claims representative -- it's not to clear to me who had this idea -- was worried that the stipulation or the amount fixed by the stipulation might be later challenged. But it was executed by each of the representatives of the primary stakeholders in these cases. Who was going to challenge it? Well, from time to time, it is true, as we all know, that people come out of the woodwork to object to things which is why I asked the question, had anybody in the world filed an objection or phoned you or written you saying such would be forthcoming. And both sides told me no.

Even if there had been such, it was incumbent upon Analysis Research Planning Corporation to consider the degree of risk. Contingencies can be theoretically possible and nevertheless be remote. Or, if it had uncertainty, it could have picked up the phone and arranged for a conference saying we think we need to keep on doing work, just want to give everybody a chance to be heard on that, or give us an opportunity if something goes bad to let us get back up to speed without requiring us to do all that work now. There were

a zillion things that could have been done. But the one that was done, spending thousands, hundreds of thousands of dollars of creditor money, was an unacceptable one.

Finally, I was told that the consultant was doing other stuff, too, assisting the future claims representative performing other asserted lien necessary functions including working against the possibility that somebody might object to the plan. But there was no basis whatever for concluding, especially after the stipulation was approved by me, that anybody would be contending that future claimants were being paid too much.

I don't think I need to go on. I think I've more than satisfactorily explained my reasons for this decision. The motion is granted to the extent I noted and is otherwise denied. The parties in this case are authorized and instructed to take the principles that I've articulated and to convert them into their dollar equivalent and to submit an order to me authorizing and directing payment of the requested fees to the extent that the principles I just articulated dictate and otherwise denying the motion.

Stand by. Mr. Smolinsky?

MR. SMOLINSKY: Yes, Your Honor. Joe Smolinsky. In the process of making my remarks this morning, I noted that we had already entered a final order approving the portion of the fees attributable to the period before January 21st. And so,

from that perspective, I don't know that we need to do anything further with respect to those fees.

THE COURT: I see.

MR. SMOLINSKY: If I understood Your Honor's ruling, you are disallowing everything above that, everything that we objected to.

THE COURT: Yes. I didn't realize that there was a period -- that for services through January 21st they had already been paid.

MR. SMOLINSKY: I just want to make sure there's no disagreement. We'll prepare an order which reflects that fact.

THE COURT: Okay.

MR. SMOLINSKY: Thank you.

THE COURT: In this third contested matter before me today, this one also, of course, in the Chapter 11 cases of reorganized debtor, GM, and its affiliates, the ad hoc committee of asbestos personal injury claimants seeks about 232,000 dollars now reduced from an earlier larger request of about 511,000 dollars for an asserted substantial contribution to the debtors' reorganization. The United States trustee objects.

The U.S. trustee's objection is sustained and the application is denied. The following are my findings of fact and bases for the exercise of my discretion in connection with this determination.

First, by way of background, it's the law in this district and others, if not everywhere, that substantial contribution provisions of the Code must be narrowly construed to discourage mushrooming expenses. Provisions like 503(b) do not change the basic rule that the attorney must look to his own client for payment. See In re Granite Partners, 213 B.R. 440 at page 445 and, likewise, In re United States Lines, 103 B.R. 427 at page 429. In short, the substantial contribution provisions are narrowly construed and they're subject to strict scrutiny. As Judge Bushman noted in U.S. Lines, that rule is well settled. Page 429.

Similarly, as my colleague, Judge Beatty noted in In re Villa Luisa L.L.C., 354 B.R. 345 at page 348, and I'm quoting, "The burden of proving substantial contribution rests on the petitioning creditor and it is exceedingly difficult since the general presumption is that the creditor is acting in its own interest. Such an award is given only for 'extraordinary creditor actions on those rare occasions when the creditor's involvement truly fosters [and] enhances the administration of the estate.'"

That rule is broadly unique to this district. As noted by Judge Richard Schmidt in In re Asarco LLC, 2010 WL 3812642 at page *8 -- Judge Schmidt, of course, sitting in the Southern District of Texas and having a very substantial expertise in Chapter 11 cases -- "Substantial contribution

claims may only be granted in unusual and rare circumstances. Narrowly construing the allowance of substantial contribution claims to rare and unusual circumstances is consistent with the general doctrine that priority statutes, such as Section 503(b) should be strictly construed to preserve the estate for the benefit of creditors."

Here, I don't doubt that the ad hoc asbestos committee's efforts benefited asbestos claimants. I suspect they benefited asbestos claimants substantially. But I find as a fact that there's been no comparable showing of a benefit for anyone else. In fact, I find the exact contrary to be true. This is a classic case where the ad hoc committee was acting in its own interest, see Villa Luisa, even where the position it was taking could harm the estate as a whole, as its position did with respect to the more than half of its original fee request that it later withdrew and, indeed, as the ad hoc committee did with respect to another 69,000 dollars in fees with respect to the Remy International and Detroit Diesel that I'll discuss momentarily.

The ad hoc committee's motion says as much. See, for example, Motion at paragraph 33. "The Stutzman firm also spent numerous hours attending to asbestos due diligence issues to protect and preserve the rights of its constituency at a time when no other party was advocating on behalf of the debtors' asbestos victims." See also Motion, paragraph 11. "The ad hoc

committee vigorously represented the interest of asbestos creditors at a time when no other case fiduciary was advocating their interests."

Assuming that to be true, and it's true only in part because I authorized nunc pro tunc retention for counsel for the official asbestos committee, even over the objection of the U.S. trustee, that's a very different thing than saying that the services provided were services that benefited everybody. They were services that benefited a very small subset of the Old GM creditor community that, as the cases make clear, is the group that should pay for it, not the car wreck victims, not the bondholders, not the retiree medical benefit plans.

The mindset of this group was evidenced by the approximately 250,000 dollars in fees it spent in opposing the 363 sale to advance its private agenda despite how critical that was to all of the ordinary and governmental creditors of this case. Now, of course, that request was withdrawn. If it didn't, I would truly be scratching my head. I spoke to that conduct before and I note that the ad hoc committee has now withdrawn its request to be paid for that reducing its request from its original size of about a half million down to about 232,000 dollars. But its preoccupation with its own needs and concerns and its failure even to materially assist everybody else in anything more than the most minimal way is apparent. And the request that remain still show that it was acting at

cross-purposes to the interest of the estate as a whole or, at the very least, looking out for itself without any corresponding or even modest benefit to anyone else in the estate.

A classic example of this is the approximately 69,000 dollars that the ad hoc committee wants for what it calls automatic stay issues. But the Old GM estate was already protected by the automatic stay. The services involved a request by Remy International and Detroit Diesel, two other entities that can be regarded as the asbestos equivalent analogue to PRPs in the environmental area, to extend the automatic stay to protect themselves by lawsuits that had been brought by asbestos claimants.

This controversy was a poster child for private litigants involving themselves in the bankruptcy process to advance their private agendas. The matter was so unimportant to the estate that the debtors' counsel didn't respond to it. The debtors' counsel didn't waste the creditors' money by preparing a response. The creditors' committee whose constituents' money has really been on the line in this case, didn't respond either. But the asbestos committee -- ad hoc committee did opposing the request which just so happened to have the effect of assisting asbestos claimants in going after others. And it did so when those asking for the injunction, Remy International and Detroit Diesel, had a right or at least

an arguable right, to go after the estate for indemnification which could actually increase claims against the estate. So the asbestos ad hoc committee sided with asbestos plaintiffs even though its doing so could increase claims against the estate.

Now I asked questions to see if my analysis in that regard was mistaken in any way. And the answer I got to the extent it was an answer was that the asbestos litigants, other than the ad hoc committee, of course, who wanted to bring these actions, went against Remy International and Detroit Diesel instead of going after the estate. But I'm not sure what basis, if any, I have to make such a finding especially since this was a motion to extend the stay. It had nothing to do with asbestos plaintiffs giving up right to go against the estate. And, frankly, folks, it walks, talks and quacks like helping out one's friends in the asbestos plaintiffs' community. It certainly didn't benefit this estate in any way, shape or form.

Moreover, it's been held that "Something more than mere conclusory statements regarding one's involvement in an act resulting in 'substantial contribution' must be tendered in order for such involvement to be compensable." It's been further stated that "Corroborating testimony by a disinterested party attesting to a claimant's instrumental acts has proven to be a decisive factor in awarding compensation to activities

which otherwise might not constitute a substantial contribution." See U.S. Lines, which made those observations. And look also at Baldwin United, 79 B.R. at 340, where the debtor's former management testified as to helpful acts in mediating disputes between senior and subordinated and equity security holders.

It's quite clear, however, that if the judge sees the substantial contribution itself, that's at least as good as a disinterested observer coming forward and making that observation. But here, I have neither. Here, I saw no evidence of any benefit to the estate as a whole as contrasted to advancing the private needs of asbestos claimants.

This case was not asbestos driven. But dealing with the needs and concerns of the small subset of asbestos creditors materially delayed and complicated the case. It didn't assist it in any way. And certainly the efforts of the asbestos ad hoc committee didn't do so. I already was asked to authorize payment of approximately 3.5 million dollars for fees and expenses of counsel for the official asbestos committee, counsel for the future claims representative and for the future claims representative himself. Now I have a request for another 232,000 dollars for a non-fiduciary plainly advancing interest of the subset of the creditor community rather than the entire creditor community in this case.

Finally, there is also an important principle of

fairness here. In substance, the ad hoc committee here is asking all of the other creditors of this estate and the taxpayers of the United States and Canada to pay its fees incurred for advancing its own needs and concerns, for advancing its own agenda. That's simply not tolerable in the absence of a substantial benefit for everyone else, a benefit for the other creditors who are being asked to foot the bill.

For all of these reasons, the motion is denied. The U.S. trustee is to settle an order in accordance with the foregoing.

We're adjourned.

MR. MASUMOTO: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 3:15 p.m.)

I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Request by New GM to participate in proceedings Re Nova Scotia trustee's claim as against old General Motors granted; record is so ordered	24	8
GUC trust's objection to William Kuntz' claims sustained; GUC trust to settle an order expunging Mr. Kuntz' claims	90 95	18 7
Fee application of Analysis Research Planning Corporation for services rendered to the future claims representative approved only through 1/21/11, the date when a stipulation resolving obligations to asbestos claimants was signed; debtors' objection sustained and application for remainder of fees denied	96	8
Objection of the United States trustee re application of the ad hoc committee of asbestos personal injury claimants for payment of fees and reimbursement of expenses sustained; application denied	104	23

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, o, ou, email=digital1@veritext.com, c=US
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